Supreme Court, U. S.
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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1159

ARTHUR F. QUERN, DIRECTOR OF THE ILLINOIS DEPARTMENT OF PUBLIC AID, ET AL.,

Petitioners,

vs.

VENUS MANDLEY, ET AL.

Respondents.

No. 76-1416

JOSEPH A. CALIFANO, SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE,

Petitioner,

vs.

VENUS MANDLEY, ET AL.,

Respondents.

ON WRITS OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITIONS FOR WRITS OF CERTIORARI
FILED FEBRUARY 22 AND APRIL 13, 1977.
CERTIORARI GRANTED JUNE 6, 1977

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INDEX

Item	Page
Relevant Docket Entries	2
Amended Complaint with Exhibit Filed December 20, 1973	13
Exhibit	25
Opinion of United States Court of Appeals for the Seventh Circuit Rendered on September 25, 1975	31
Proposed Partial Final Judgment Order Filed With the District Court on November 26, 1975	46
Order of District Court Entered December 1, 1975	58
State Defendants' Motion to Dismiss Filed December 1, 1975	59
Exhibit 1	61
Exhibit 2	63
Federal Defendant's Motion to Dismiss Filed December 9, 1975	65
Plaintiffs' Answer to Defendants' Motions to Dismiss Filed December 16, 1975	66
Exhibit 1	72
Exhibit 2	76
Exhibit 3	77
Exhibit A	79
Exhibit B	80
Exhibit C	81
Supplement and Amendment to Plaintiffs' Answer to Defendants' Motions to Dismiss Filed December 18, 1975	82
Exhibit 4	83

ITEM — PAGE

State Defendants' Objections to Entry of Proposed Order Filed January 21, 1976 97

Federal Defendant's Objections to Plaintiffs' Proposed Final Judgment Filed January 22, 1976 102

Order Entered July 12, 1976 106

Transcript of Hearing Held July 12, 1976 106

Opinion of the United States Court of Appeals for the Seventh Circuit Rendered November 23, 1976 119

Order Entered November 29, 1976 142

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APPENDIX

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
9-25-73	Filed Complaint and one copy.
9-28-73	Filed defendant's Answer.
12-20-73	Filed AMENDED COMPLAINT.
1-9-74	Filed defendants' notice: answer to amended complaint.
2-11-74	Filed Amendment to answer to amended complaint.
3-13-74	Filed answer of Secretary of Health, Education and Welfare to amended complaint.
7-17-74	Enter order dated 7-16-74: Enter order that motion of defendants Edelman and Illinois Department of Public Aid to amend their answer to amended complaint, and verbal motion of defendant U. S. Department of Health, Education & Welfare to similarly amend its answer, are granted, and trial date will stand unless plaintiffs file a Second Amended Complaint. (DRAFT) – McMillen, J. Notices mailed 7-17-74.
11-21-74	Enter order dated November 21, 1974: Enter decision that judgment is entered in behalf of the defendants on the amended complaint insofar [as] it challenges the content of former defendant Edelman's emergency assistance program as it existed on October 2, 1973, but State defendant is ordered to show cause within a reasonable time hereof how the administration and

DATE	PROCEEDINGS
	delivery of emergency assistance can be expedited, preferably on the next court date. This case will be called for a progress report on Tuesday, December 3, 1974 at 10:00 a.m. (DRAFT) – McMillen, J. Notices mailed 11-21-74.
10-24-75	Filed Certified Copy of an order dated September 25, 1975 from the USCA, 7th Circuit: Judgment AFFIRMED as to the order of March 14, 1975; and the order of November 21, 1975, is REVERSED insofar as it sustained the validity of the Illinois program for emergency assistance, in accordance with the opinion of this Court filed this date. Costs of this appeal are awarded to plaintiffs.
10-28-75	Enter order dated October 24, 1975: Enter order that since the position of the parties with respect to further litigation in this case must be determined after the mandate has been received from the Court of Appeals, thus [sic] case will be called for a report on status on Friday, October 31, 1975 at 10:00 a.m., at which time the parties will be expected to outline to the court what they propose to do in order to avoid further hearings, or if such hearings are necessary, what issues will be litigated therein. (DRAFT) – McMillen, J. Notices mailed 10-28-75.
11-3-75	Enter order dated October 31, 1975: Plaintiff's motion for leave to submit a proposed final judgment is denied. Cause is continued for a

DATE	PROCEEDINGS
	status report to November 18, 1975 at 11:30 a.m. – McMillen. J. Notices mailed 11-3-75.
11-25-75	Filed plaintiffs' report on defendants' attempt to evade requirements of § 406(e) of the Social Security Act; affidavit by Michael F. Lefkow; notice of filing.
12-1-75	Filed defendants' notice of filing; motion to dismiss; attachments.
12-1-75	Filed plaintiffs' motion for entry of final judgment and decree.
12-2-75	Enter order dated December 1, 1975: Plaintiffs' motion for entry of final judgment and decree is denied. Defendants are granted 1 week to file memorandum in support of their motion to dismiss for want of mootness, responsive memoranda shall be filed 1 week thereafter and the motion to dismiss will be taken under advisement. Cause is taken off the call. – McMillen, J. Notices mailed 12-2-75.
12-4-75	Filed plaintiffs' request for admission of facts. Filed plaintiffs' request for production of documents.
12-9-75	Filed Government's motion.
12-10-75	Filed plaintiffs' motion to reconsider entry of final judgment and decree.
12-12-75	Filed plaintiffs' answer to defendants' motions to dismiss.
12-17-75	Filed plaintiffs' memorandum in opposition to motions to dismiss; exhibits.

DATE	PROCEEDINGS
12-18-75	Filed supplement and amendment to plaintiffs' answer to defendants' motions to dismiss; exhibits.
12-31-75	Filed notice of appeal on behalf of plaintiffs.
1-21-76	Filed defendants' notice of filing with objections to the entry of plaintiffs' proposed order.
1-22-76	Filed federal defendants' objections to plaintiffs' proposed final judgment.
2-3-76	Enter order dated December 31, 1975: Enter decision that motion of defendants to dismiss this case as moot is denied. Further ordered that defendants file their objections to proposed final judgment and decree filed by plaintiffs herein on November 26, 1975 within 3 weeks hereof, serving a copy of their objections on attorneys for plaintiffs. This case will be called for a report on status on MONDAY, MAY 3, 1976 at 10:00 a.m. subject to whatever motions may be filed by any party, if any. (DRAFT). – McMillen, J. Notices mailed 2-3-76.
2-9-76	Filed plaintiffs' motion to dismiss appeal.
2-9-76	Filed plaintiffs' motion for leave to file instanter response to defendants' objections to final judgment and decree.
2-9-76	Filed plaintiffs' motion for entry of final judgment and decree.
2-9-76	Filed plaintiffs' motion for award of attorney's fees.

DATE	PROCEEDINGS
2-10-76	Enter order dated February 9, 1976: Plaintiffs' motion to dismiss appeal is granted. Plaintiffs' motions (1) for leave to file response to objected final judgment, (2) to enter final judgment and decree and (3) to award attorneys' fees are entered and continued to May 3, 1976 at 10:00 a.m. – McMillen, J. Notices mailed 2-10-76.
4-2-76	Filed Certified Copy of Order from U.S.C.A. 7th Circuit dated May 31, 1976: IT IS ORDERED that the aforesaid petition for Writ of Mandamus be, and the same is hereby, DENIED.
4-13-76	Filed defendant James L. Trainor's notice of motion with motion for a protective order with affidavits of Jesse B. Harris and George Grumley.
4-14-76	Filed plaintiffs' response to motion for protective order.
4-15-76	Enter order dated April 14, 1976: Ordered that defendant James L. Trainor is protected from having his deposition taken. Until further order of this court. (DRAFT) – McMillen, J. Notices mailed 4-15-76.
5-3-76	Filed state defendants' Notice of Filing; Report to the Court.
5-4-76	Enter order dated 5-3-76: State defendants granted 10 days to file description of plan. Parties granted 1 week thereafter to file objections. Further status report is continued to Monday, May 24, at 11 a.m. – McMillen, J.

DATE	PROCEEDINGS
5-4-76	Enter order dated 5-3-76: Plaintiffs' motion for leave to file response to objected final judgment, to enter final judgment and for attorneys' fees is entered and continued generally. – McMillen, J. Notices mailed 5-4-76.
5-12-76	Filed state defendants' Notice of Filing; Report to the Court of Description of Defendants' Proposed Plan for Emergency Assistance.
5-19-76	Filed Plaintiffs' Statement in Lieu of Objections to Defendants' Proposed Plan for Emergency Assistance.
5-19-76	Filed Secretary's Comments on Director Trainor's Plan Description filed May 12, 1976.
5-21-76	Filed State Defendants' Notice of Motion; Motion to Change Status Date.
5-24-76	Enter order dated 5-21-76: Defendants granted 10 days to file an Amended Plan. Status report is reset from May 24, 1976 to Tuesday, June 1, 1976 at 10:30 a.m. – McMillen, J. Notices mailed 5-24-76.
6-2-76	Enter order dated 6-1-76: Further status report is continued to Monday, June 21, 1976 at 10 a.m. – McMillen, J. Notices mailed 6-2-76.
6-18-76	Filed defendants' Notice of Filing; Report of Status.
6-21-76	Filed plaintiffs' June 21, 1976 report to the Court.

DATE	PROCEEDINGS
7-6-76	Filed plaintiffs' July 6, 1976 report to the Court.
7-7-76	Enter order dated 7-6-76: Plaintiff granted to July 12, 1976 at 10:30 a.m. to file an amended complaint. – McMillen, J. Notices mailed 7-7-76.
7-9-76	Filed plaintiffs' memorandum in support of motion to vacate order and to compel deposition of defendant Trainor.
7-9-76	Filed plaintiffs' Notice of taking depositions of James L. Trainor et al and Notice to produce documents.
7-9-76	Filed Notice of Filing.
7-9-76	Filed plaintiffs' Motion to vacate.
7-12-76	Enter order dated 7-9-76: Plaintiffs' motion to vacate protective order and to compel deposition of defendant Trainor is denied. – McMillen, J. Notices mailed 7-12-76.
7-13-76	Enter order dated 7-12-76: Defendant's motion to dismiss for mootness is granted, and this cause is dismissed for lack of case or controversy. – McMillen, J. Notices mailed 7-13-76.
7-21-76	Filed plaintiffs' Motion to vacate dismissal.
7-27-76	Filed plaintiffs' Motion to advance time for defendants' response to Rule 59 motions and to set decision date for July 30, 1976.
7-28-76	Enter order dated 7-27-76: Plaintiffs' motion to advance time to defendants' response and ruling date is denied. – McMillen, J. Notices mailed 7-28-76.

DATE	PROCEEDINGS
8-11-76	Filed plaintiffs' Notice of Appeal from the order granting defendants' motion to dismiss as moot entered July 12, 1976.
8-31-76	Filed plaintiff/appellant's Notice of Emergency Appeal.
8-31-76	Certified and transmitted Emergency Record on Appeal consisting of District Court's order of July 12, 1976, dismissing the case and certified copy of the docket entries, along with the letter request for expedited appeal.
9-3-76	Filed USCA No. 76-1865.
11-12-76	Enter order dated November 11, 1976: Enter decision that motion of plaintiff to vacate dismissal and to allow discovery of defendant Trainor is denied (DRAFT). – McMillen, J. Notices mailed 11-12-76.
11-19-76	Filed plaintiffs' Notice of Appeal from the Order and decision of November 11, 1976, and from the district court's order of dismissal dated July 12, 1976.
11-23-76	Filed certified copy USCA: It is ordered and adjudged that the judgment of the district court in this cause appealed from be and the same is hereby reversed and remanded in accordance with the opinion filed this date.
11-30-76	Enter order dated November 29, 1976: Enter final judgment and decree (draft) (taken off the call for December 1, 1976). – McMillen, J. Notices mailed 11-30-76.
12-6-76	Filed state defendants' Notice of Filing; Defendant James L. Trainor's Response to "Final

DATE	PROCEEDINGS
	Judgment and Decree" entered November 29, 1976.
12-10-76	Enter order dated December 10, 1976: Plaintiffs' motion for rule to show is entered and continued to Monday, December 13, 1976 at 11:30 a.m. – McMillen, J. Notices mailed 12-10-76.
12-10-76	Filed state defendants' Notice of Motion; Motion to Alter or Amend Order of November 29, 1976.
12-10-76	Filed plaintiffs' Motion for Rule to Show Cause; Notice of Filing.
12-15-76	Enter order dated December 13, 1976: State defendants granted 10 days to file sworn response to motion for rule to show cause. – McMillen, J. Notices mailed 12-15-76.
12-21-76	Filed state defendants' Notice of Filing; Defendants' Memorandum in Opposition to Plaintiffs' Motion for a Rule to Show Cause and, in Support of Defendants' Motion to Alter or Amend the Final Judgment and Decree and Second Report to the Court.
12-27-76	Filed Motion to Strike from the Record State Defendants' Motion to Alter or Amend the Judgment and their reports of December 6 and December 21, 1976.
12-27-76	Filed Motion for Supplemental Rule to Show Cause Why the State Defendants Should Not Be Held in Contempt of Court.
12-27-76	Enter order dated December 27, 1976: Plaintiffs' motions for supplemental rule to show

DATE	PROCEEDINGS
	cause, to strike, for leave to file memorandum and defendants' motion under 59(e) are entered and continued to Monday, January 3, 1977 at 10:30 a.m. – McMillen, J. Notices mailed 12-27-76.
12-28-76	Filed Statement to the Court in Lieu of Submission of Draft Injunction Against State Defendants.
1-4-76	[sic] Enter order dated January 3, 1977: Defendants granted 14 days to file a response to rule to show cause and supporting memo to motion under 59(e); taken under advisement. – McMillen, J. Notices mailed 1-4-77.
1-19-77	Enter order dated January 17, 1977: State defendants are given to and including January 25, 1977, to file their briefs in support of their motion to alter this Court's Judgment Order and in opposition to plaintiffs' motion for Rules to Show Cause. Plaintiffs granted to February 4, 1977 to reply. – McMillen, J. Notices mailed 1-19-77.
1-25-77	Filed opinion: It is ordered that this appeal from the decision of the USDC be and the same is hereby dismissed pursuant to Rule 42(b) FRAP.
2-1-77	Filed letter of transmittal; certified copy of order signed January 28, 1977 staying and recalling the mandate of the USCA, 7th Circuit.
2-22-77	Filed Defendant Califano's submission to Court of Proposed Regulations.

DATE	PROCEEDINGS
2-24-77	Filed copy of letter addressed to Hon. Daniel M. Friedman, USSC re application of extension of stay of mandate of USCA denial, dated February 18, 1977.
3-14-77	Filed Plaintiffs' Response to Defendant Califano's Amended Submission to Court of Proposed Regulations.
3-14-77	Filed defendant Califano, Jr.'s Amended Submission to Court of Proposed Regulations.
3-15-77	Enter order dated March 14, 1977: Leave granted to file Califano's amended submission to court of proposed regulations. – McMillen, J.
3-28-77	Filed plaintiffs' Motion for Award of Attorneys' Fees.
3-30-77	Enter order dated March 28, 1977: Plaintiff granted 15 days to file affidavit and memo re motion for attorneys' fees. Defendant granted 10 days thereafter to reply. – McMillen, J. Notices mailed 3-30-77.
4-25-77	Filed defendant's Notice of Motion; Motion for an Extension of Time.
4-26-77	Enter Order dated April 25, 1977: Federal and state defendants are granted 2 weeks to file answering memo re motion for fees. Plaintiffs granted 5 days thereafter to reply. – McMillen, J. Notices mailed 4-27-77.
6-8-77	Enter order dated 6-7-77: In view of the fact that the United States Supreme Court has granted defendants' petitions for writ of certiorari on June 6, 1977, we will hold all motions currently pending before us in abeyance pending the Supreme Court's decision. – McMillen, J. Notices mailed 6-8-77.

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANN KILGORE, VENUS MANDLEY, GARY McELROY, FRANCES GALLMAN, individually and on behalf of their minor children and on behalf of all others similarly situated; the CHICAGO WELFARE RIGHTS ORGANIZATION, an Illinois not-for-profit corporation; and the ILLINOIS WELFARE RIGHTS ORGANIZATION, an unincorporated association,

Plaintiffs,

vs.

JOEL EDELMAN, Director, Illinois Department of Public Aid; the ILLINOIS DEPARTMENT OF PUBLIC AID; and the UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE,

Defendants.

No. 73 C 2453

AMENDED COMPLAINT

COUNT I

1. This is an action for declaratory and injunctive relief, authorized by the Civil Rights Act, 42 U.S.C. § 1983, to secure rights established by the Social Security Act (the Act), section 406(e), 42 U.S.C. § 606(e) in which Congress established a program to provide emergency assistance to needy families with children, and to secure rights pertaining to emergency assistance which are set out in sections 402 and 403(a)(5) of the Act, 42 U.S.C. §§ 602, 603(a)(5), and in regulations promulgated by the United States Department of Health, Education and Welfare, 45 C.F.R. §§ 201.2, 201.3, 205.5, 233.10(a)(1)(ii), and 233.120. Plaintiffs individually and on behalf of all others similarly situated seek to enjoin the defendants from administering its emergency assistance program in violation of federal and state law.

2. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331, 1343(3) and (4), and 1346. Declaratory judgment is sought pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure. The amount in controversy exceeds $10,000.

3. Plaintiff Ann Kilgore is a citizen of the United States and a resident of Chicago, Illinois. She is suing individually and on behalf of her minor child, William, and on behalf of all others similarly situated.

4. Plaintiff Venus Mandley is a citizen of the United States and a resident of Chicago, Illinois. She is suing individually and on behalf of her two minor children, Keith and Meredith, and on behalf of all others similarly situated.

5. Plaintiff Gary McElroy is a citizen of the United States and a resident of Chicago, Illinois. She is suing individually and on behalf of her five minor children, Marquita, Mongo, Ivy, Carolyn and Larry, and on behalf of all others similarly situated.

6. The named plaintiffs are all recipients of Aid to Families with Dependent Children (AFDC), a federally funded program established by Title IV of the Social Security Act providing for protection of needy families.

7. Plaintiff Chicago Welfare Rights Organization is an Illinois not-for-profit corporation organized to assist its member community welfare organizations in the alleviation of poverty and enforcement of the legal rights of their members, who are welfare recipients and other poor persons. Members of the local community welfare organizations are entitled to receive emergency assistance under the conditions established by the Social Security Act and regulations issued thereunder.

8. Plaintiff Illinois Welfare Rights Organization is an unincorporated association of local welfare organizations in Illinois having a community of interest in assisting in the alleviation of poverty and enforcement of the legal rights of welfare recipients. Members of the local welfare organizations are entitled to receive emergency assistance under the conditions established by the Social Security Act and regulations issued thereunder.

9. The individual (non-organizational) plaintiffs bring this action individually and on behalf of all others similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class is composed of all AFDC recipients, applicants for AFDC, and other families with needy children in Illinois.

10. The class is so numerous that joinder of all members is impractical. There are questions of law and fact common to the class, and these questions predominate over any questions affecting only individual members. Plaintiffs' claims are typical of the claims of the class. Plaintiffs will fairly and adequately protect the interests of the class. The defendants have acted on grounds generally applicable to the class, thereby making appropriate injunctive and declaratory relief with respect to the class as a whole.

11. Defendant Joel Edelman is Director of the Illinois Department of Public Aid and is charged with statewide administration of the federally funded public assistance programs, and with conforming the program to federal and state statutes and regulations pertaining to such programs.

12. Defendant Illinois Department of Public Aid (IDPA) is the agency of the State of Illinois that administers the public assistance programs in Illinois.

13. Defendant United States Department of Health, Education and Welfare is the agency of the United States government that administers and funds public assistance programs of participating states, including Illinois.

14. AFDC is a program of assistance providing funds for basic maintenance for needy families with dependent children in which Illinois participates.

15. Emergency assistance is a separate program of assistance for AFDC recipient families and other families with needy children, providing funds to meet non-recurring emergencies, as opposed to regular maintenance needs, to both recipients and non-recipient families.

16. The emergency assistance program is defined by section 406(e) of the Social Security Act, 42 U.S.C. § 606(e), as follows:

> (e)(1) The term "emergency assistance to needy families with children" means any of the following, *furnished for a period not in excess of 30 days* in any 12-month period, in the case of a needy child under the age of 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a)(1) of this section in a place of residence maintained by one or more of such relatives as his or their own home but only where such child is without available resources the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment —
>
> (A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and
>
> (B) such services as may be specified by the Secretary; but only with respect to a State whose State plan *approved* under section 602 of this title includes provision for such assistance.

17. Participation in the federally funded emergency assistance program is optional with the states, but participating States must comply with federal requirements. Illinois participates in and receives federal funding under the emergency assistance program established by the Social Security Act, 42 U.S.C. § 606(e).

18. The emergency assistance program at issue purports to be the only assistance the IDPA provides plaintiffs and the class they represent in times of emergency. A copy of the emergency assistance program is attached as Exhibit A to this amended complaint.

19. Under the existing plan, emergency assistance is provided only for the following emergencies:

a) When an AFDC family is homeless as a result of damage to the building, rendering it uninhabitable; or when a court-ordered eviction occurs for reasons other than the AFDC recipient's failure to pay rent; or when the AFDC family is potentially homeless due to damage to a portion of the building.

b) When the AFDC applicant, determined presumptively eligible for AFDC, is in emergency need of clothing and/or household furnishings and equipment. (Emergency food and rent can also be authorized by disbursing order at the time the applicant is determined presumptively eligible as provided in this subparagraph.)

20. Under the plan, no assistance is provided to AFDC recipients, applicants for AFDC, and other needy families with children who face destitution, but do not qualify under the categories enumerated in paragraph 19 herein.

21. Plaintiff Ann Kilgore and her son William receive $196 per month under the AFDC program. Her husband, Ralph Kilgore, receives approximately $40 per month under disability assistance for a family total of $236.

22. Plaintiff Venus Mandley and her two children receive $236 per month under the AFDC program, plus an additional $61 excess rent as long as she remains at her present address.

23. Plaintiff Gary McElroy and her five children receive $389 per month under the AFDC program.

24. On October 16, 1973, a fire in Mrs. McElroy's apartment destroyed virtually all of the clothing of herself and her three-year-old daughter, Marquita. The fire also destroyed two of the family's beds. In addition, the fire destroyed two dressers, bed linens, towels, and other household furnishings, as well as food stamps for the month of October.

25. Plaintiff McElroy applied for emergency assistance on October 17, 1973 to restore the clothing, household furnishings and equipment destroyed by the fire and to obtain emergency food.

26. Plaintiff McElroy's application for emergency assistance was denied by agents of defendants Edelman and IDPA because her emergency did not fall within the categories enumerated in paragraph 19 of this amended complaint, namely, because there was no structural damage to the building causing potential homelessness.

27. Plaintiff McElroy has no funds with which to replace the items destroyed by the fire which are necessary for a minimal livelihood.

28. As a result of the allegations stated in paragraphs 23-27 herein, plaintiff McElroy and her family are suffering destitution and injury to their health and well being.

29. Plaintiff Frances Gallman and her four children and one grandchild receive $389 per month under the AFDC program.

30. On November 24, 1973, Mrs. Gallman was attacked and robbed of $550 while on her way to place a cash security deposit and rent payment, as demanded by the landlord, on an apartment to which she planned to move.

31. Thereafter, Mrs. Gallman applied for emergency assistance to enable her and her family to avoid destitution.

32. Agents of defendants Edelman and IDPA denied plaintiff Gallman's application for emergency assistance because her emergency did not fall within the categories enumerated in paragraph 19 of this amended complaint.

33. Plaintiff Gallman has insufficient funds to meet her needs and the needs of her family.

34. As a result of the allegations stated in paragraphs 29-33 herein, plaintiff Gallman and her family are suffering destitution and injury to their health and well being.

35. Members of plaintiff Chicago Welfare Rights Organization include AFDC recipients and other families with needy children who are and will be in need of emergency assistance under the emergency assistance program of the IDPA.

36. Members of plaintiff Illinois Welfare Rights Organization include AFDC recipients and other families with needy children who are and will be in need of emergency assistance under the emergency assistance program of the IDPA.

37. Emergency assistance for emergencies not enumerated in paragraph 19 herein which have arisen and will arise for all the plaintiffs and members of the class, and members of the organizational plaintiffs, will be necessary to avoid destitution and to protect the health and well being of these needy families.

38. Defendants Edelman and IDPA's emergency assistance program fails to meet the requirements of 42 U.S.C. § 606(e) and regulations promulgated thereunder, 45 C.F.R. § 233.120 in the following respects: it fails to provide assistance to avoid destitution resulting from lack, loss or

destruction of food, clothing, shelter, utilities, personal essentials and household supplies, and it fails to provide that emergency assistance will be given forthwith.

39. The emergency assistance plan excludes persons from emergency assistance on an arbitrary, unreasonable and inequitable basis in violation of 45 C.F.R. § 233.10(a)(1)(ii).

40. The emergency assistance program violates the Illinois Public Aid Code, Ill. Rev. Stat. ch. 23, § 12-8, which establishes the Public Assistance Revolving Fund and re[illegible]res that it shall be used, inter alia:

> a. To provide immediate financial aid to applicants in acute need who have been determined eligible for aid under Articles III [Aid to the Aged, Blind or Disabled], IV [AFDC] or V [Medical Assistance Program].
>
> b. To provide emergency aid to recipients under said Articles who have failed to receive their grants because of mail box or other thefts, or who are victims of a burnout, eviction, or other circumstances causing privation, in which cases the delays incident to the issuance of grants from appropriations would cause hardship and suffering.

41. Approval of the emergency assistance program of defendants Edelman and IDPA by the United States Department of Health, Education and Welfare, evidencing compliance with section 406(e) of the Act, 42 U.S.C. § 606(e) and regulations promulgated thereunder, including 45 C.F.R. §§ 233.10(a)(1)(ii) and 233.120 has not occurred. 42 U.S.C. §§ 602, 603(a)(5), 45 C.F.R. §§ 201.2-201.3, 205.5.

42. Defendant United States Department of Health, Education and Welfare continues to fund an emergency assistance program which violates federal and state law as

alleged herein, in violation of sections 403(a)(5) and 406(e) of the Act, 42 U.S.C. §§ 603(a)(5) and 606(e), and 45 C.F.R. § 233.120(b).

43. Unless the policies and procedures complained of herein are enjoined by this court, plaintiffs and the members of the plaintiff class will suffer irreparable injury.

44. Plaintiffs have no adequate administrative remedy or remedy at law.

WHEREFORE, plaintiffs pray, individually and on behalf of all others similarly situated, that this Court

1. Enter preliminary and permanent injunctions to restrain defendants from administering an emergency assistance program which violates federal and state law.

2. Enter a declaratory judgment that defendants' emergency assistance program violates the Social Security Act, §§ 402, 403(a)(5) and 406(e), 42 U.S.C. §§ 602, 603(a)(5) and 606(e), and regulations promulgated thereunder, 45 C.F.R. §§ 201.2, 201.3, 205.5, 233.120, 233.10(a)(1)(ii) and the Illinois Public Aid Code, Ill. Rev. Stat. ch. 23, § 12-8.

3. Allow plaintiffs their costs herein and grant such further relief as may be just and appropriate.

COUNT II

1. This is an action for declaratory and injunctive relief, authorized by the Civil Rights Act, 42 U.S.C. § 1983, to secure rights established by the equal protection clause of the Fourteenth Amendment, the supremacy clause of Article 6, section 2 of the Constitution, the Social Security Act, 42 U.S.C. §§ 601 et seq., and the Illinois Public Aid Code. Plaintiffs, individually and on behalf of all others similarly situated, seek declaratory and injunctive relief against defendants' actions in administering an inadequate emergency assistance program.

2 - 44. Plaintiffs reallege and incorporate paragraphs 2-44 of Count I as and for paragraphs 2-44 of Count II.

45. The implementation of the emergency assistance program by defendants creates two classes of AFDC recipients, applicants for AFDC, and other families with needy children: one composed of persons with emergency need who will be able to obtain emergency assistance upon a showing of emergency need within the categories enumerated in the emergency assistance plan; the other composed of persons similarly situated whose emergency needs are not within said categories and who will not be able to obtain emergency assistance. Plaintiffs and members of the plaintiff class unable to obtain emergency assistance are being and will be subjected to arbitrary and invidious discrimination without a rational relation to a legitimate state interest, in violation of the equal protection clause of the Fourteenth Amendment.

46. Unless the policies and procedures complained of herein are enjoined by this court, plaintiffs and members of the plaintiff class will suffer irreparable injury.

47. Plaintiffs have no adequate administrative remedy or remedy at law.

WHEREFORE, plaintiffs pray, individually and on behalf of all others similarly situated, that this court

1. Enter preliminary and permanent injunctions against implementation of the emergency assistance program in violation of plaintiffs' rights under the equal protection clause of the Fourteenth Amendment.

2. Enter a declaratory judgment that defendants' emergency assistance program violates plaintiffs' rights under the equal protection clause of the Fourteenth Amendment.

3. Allow plaintiffs their costs herein and grant such further relief as may be just and appropriate.

Joan Humphrey

Stephen G. Seliger

Lorelei Borland

Michael F. Lefkow

James D. Weill

Legal Assistance Foundation of Chicago
4564 N. Broadway
Chicago, Illinois 60640
769-1015

EXHIBIT

EMERGENCY ASSISTANCE PROGRAM

6500 *Provisions*

The Emergency Assistance Program is a means of meeting emergent needs of AFDC applicants determined eligible for a money payment and AFDC recipients who receive regular monthly grants. (Migrant workers with families are not eligible for this Emergency Assistance Program.) Emergency Assistance is available for a period not to exceed 30 consecutive days in any 12 consecutive months.

An "emergent need" exists when one of the following crisis situations occurs:

1. The AFDC family is homeless (without shelter) as a result of damage to the building rendering it uninhabitable (example: fire, condemnation).
2. A court-ordered eviction occurs for reasons other than the recipient's failure to pay rent.
3. The AFDC family is potentially homeless due to damage to a portion of the building.
4. The AFDC applicant, determined presumptively eligible for AFDC, is in emergent need of clothing and/or household furnishings and equipment. (Emergent food and rent can also be authorized by disbursing order at the time the applicant is determined presumptively eligible as provided in this paragraph. Any amount thus authorized may not exceed the amount calculated as the applicant's first month's payment, and will be deducted from the applicant's first month's payment.)

Verification by staff of the emergent need is required prior to authorization of Emergency Assistance.

6510 *Financial Assistance Provided*

Upon verification of emergent need, Form DPA 1164, Request for Emergency Assistance, will be completed in triplicate and two copies forwarded to:

Bureau of Fiscal Management
Illinois Department of Public Aid
618 East Washington Street
Springfield, Illinois 62726

Upon proper completion of Form DPA 1164, an emergency check will be issued by the Bureau of Fiscal Management. One copy of Form DPA 1164 will be returned to the county department/district office indicating the date and amount for which the emergency check is authorized.

If a mailing address for the emergency check is questionable, the check should be addressed to the grantee in the care of the county department/district office.

Assistance granted under this provision will not be deducted from future assistance payments.

6511 *Homelessness*

Emergency Assistance may be authorized to meet emergent needs for food, clothing, household furnishings, household equipment, rent and moving expenses in amounts not to exceed those listed below. The amounts are maximum allowances and the payment authorized should be based upon verification of the family's need for each individual item.

1. **Food**

If money is needed for the purchase of food, each person in the assistance unit may be allowed $1 per day, prorated to the next regular check date.

Special Food Stamp Authorization Procedures. AFDC families participating in the Food Stamp Program who have suffered loss or destruction of food stamps may have their previously issued food stamps replaced (see Food Stamp Manual topic 5300). Recipients who have suffered the loss of Food Stamp Authorization Cards are to be provided with a replacement card. Eligible families not regularly participating in the Food Stamp Program may be eligible for food stamps (see Food Stamp Manual Chapter 9000).

2. Clothing, Household Furnishings, Household Equipment

Size Assistance Unit	Clothing	Household Furnishings	Household Equipment
2	$ 48	$ 84	$ 11
3	72	121	14
4	96	121	14
5	120	166	16
6	144	166	16
7	168	212	18
8	192	212	18
Each Additional Person	24	23	1

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3. **Shelter Costs (Based on groupings of counties in Chapter 1000)**

Group I Counties	$117
Group II Counties	102
Group III Counties	72

4. **Moving Costs**

Cook County The IDPA Relocation Service will be responsible for providing moving service and shall assume responsibility for payment to all vendors providing such service.

Relocation Service Section
Illinois Department of Public Aid
209 West Jackson Boulevard
Chicago, Illinois 60606

If a request for other emergent needs is being made, a separate DPA 1164 will be completed according to procedures described in topic 6510.

Downstate A maximum of $100 can be authorized for moving costs.

6512 *Court-Ordered Eviction*

Moving costs only may be authorized for emergent needs resulting from a court-ordered eviction which occurs for reasons other than the recipient's failure to pay rent. The policy provided in topic 6511 pertaining to moving costs is applicable.

6513 *Potential Homelessness*

Emergency Assistance may be authorized to meet emergent needs for food, clothing, household furnishings and household equipment. The policy provided in topic 6511 pertaining to the maximum allowances for these items is applicable.

6514 *Emergent Need at Point of Initial Eligibility*

Emergency Assistance may be authorized to meet emergent needs for clothing, household furnishings and household equipment for applicants determined eligible for AFDC and who, at the point of application, have an emergent need for these items. The policy provided in topic 6511 pertaining to the maximum allowances is applicable.

6520 *Medical Care Expenses*

Medical assistance to AFDC families will be provided in accordance with the approved Illinois Title XIX Medical Assistance Plan (see Manual Chapter 5000 for procedures regarding the replacement of the Medical ID Card). Funeral and burial expenses will be met under the provision of existing policy (see Manual Chapter 6150).

6530 *Social Services*

All social services provided by the Department will be available to AFDC families requiring Emergency Assistance by initiating an immediate referral to the Social Services Unit. Services available to the recipient will include, but are not limited to, information, referral counseling, and services to assist the recipient in securing family shelter.

United States Court of Appeals for the Seventh Circuit

Nos. 75-1083, 75-1245

Venus Mandley et al., plaintiffs-appellants

v.

James L. Trainor et al., defendants-appellees

Argued June 6, 1975 — Decided Sept. 25, 1975

Before Moore,[*] Senior Circuit Judge, Cummings
and Bauer, Circuit Judges.

Cummings, Circuit Judge.

This class action was brought by Illinois recipients of the Aid to Families with Dependent Children (AFDC) program and the Illinois and Chicago Welfare Rights Organizations against the Illinois Department of Public Aid (the Department), its director and the United States Department of Health, Education and Welfare (HEW). Plaintiffs alleged that the Department's revised program for emergency assistance to AFDC recipients violated Section 406(e) of the Social Security Act (42 U.S.C. § 606(e)), regulations promulgated thereunder by HEW, the Equal Protection Clause of the Fourteenth Amendment, and the Illinois Public Aid Code (Ill. Rev. Stats. ch. 23, § 12-8 (1973)). Plaintiffs sought declaratory and injunctive relief against the implementation and operation of the program and an injunction requiring expedited processing and delivery of emergency assistance to those eligible to receive it.

---

[*] Senior Circuit Judge Leonard Page Moore of the Second Circuit is sitting by designation.

After a bench trial, the district court rendered a decision holding that the Illinois program for emergency assistance conforms to the requirements of federal and state law, except that the processing was too slow. Jurisdiction was refused with respect to the pendent state claim that the Illinois program violates the Illinois Public Aid Code. However, the State defendants were ordered to show cause with respect to expediting emergency assistance.

In its second memorandum opinion, the district court ordered the State defendants to show cause why emergency assistance checks could not be written in Chicago or in a district office other than Springfield, Illinois, or why some other method of payment could not be devised to eliminate delays from unnecessary Springfield mailings.

The district court's final decision was entered on March 14, 1975. This order specified the steps to be taken by the Department to speed up the delivery of assistance in Cook County. However, in practical effect the order did not require the State defendants to furnish emergency assistance in the 101 other Illinois counties by any means other than mailing from Springfield.

Plaintiffs appealed from the original and final orders of the district court insofar as they denied plaintiffs the requested relief. We find the Illinois emergency assistance scheme to be in conflict with the Social Security Act and therefore invalid by virtue of the Supremacy Clause of the Constitution. Accordingly, we reverse that portion of the district court's order that is to the contrary.[1]

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[1] Such reversal was also sought by various charities that filed a brief *amici curiae.*

In 1935, Congress enacted the AFDC program as Title IV-A of the Social Security Act. Provision for the economic security of children was made by offering substantial federal funds to states submitting plans complying with the Act and HEW regulations. In 1968, Congress enacted an emergency assistance program to enable states to meet the immediate needs of children. The present dispute concerns the mandatory scope of the program under the federal statute once a state decides to include emergency assistance in its plan.

The key provision of the Social Security Act with respect to emergency assistance to needy children is contained in 42 U.S.C. § 606(e) (Section 406(e) of the Act) which provides:

> (1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age of 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a)(1) of this section in a place of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment —
>
> (A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and

> (B) such services as may be specified by the Secretary;
>
> but only with respect to a State whose State plan approved under section 602 of this title [section 402 of the Act] includes provision for such assistance.
>
> (2) Emergency assistance as authorized under paragraph (1) may be provided under the conditions specified in such paragraph to migrant workers with families in the State or in such part or parts thereof as the State shall designate.

In summary, this statute authorizes emergency assistance to a needy child under 21, living with relatives specified in 42 U.S.C. § 606(a), who is without available resources, if the assistance is necessary to avoid destitution or to provide living arrangements in a home, and if the need did not arise because such child or relatives refused without good cause to accept training or employment.

Under the March 1971 Illinois emergency assistance plan, its first election of the reimbursement of provisions in 42 U.S.C. § 606(e), eligibility was limited to AFDC recipients and confined to the following needs:

> § 6510 EMERGENCY ASSISTANCE PROVISIONS: ACTIVE AFDC ONLY
>
> (*a*) Paying delinquent rent or property payments allowed in lieu of rent to prevent eviction;
>
> (*b*) Paying delinquent utilities bills to restore discontinued service; and
>
> (*c*) Meeting immediate, emergent needs for other items of basic need included in the Standards of Assistance.

Moving costs were later added, and needy families not eligible for AFDC were excluded unless their needs resulted from civil disorders.

Subsequently HEW suggested that Illinois should be more specific in the listing of the emergencies it did compensate. Therefore, on October 1, 1973, the Department revised its program and limited assistance to situations where an "emergent need" existed. The payments were still restricted to those eligible for AFDC and further restricted by the definition of "emergent need":

> An "emergent need" exists when one of the following crisis situations occurs:
>
> 1. The AFDC family is homeless (without shelter) as a result of damage to the building rendering it uninhabitable (example: fire, condemnation).
>
> 2. A court-ordered eviction occurs for reasons other than the recipient's failure to pay rent.
>
> 3. The AFDC family is potentially homeless due to damage to a portion of the building.
>
> 4. The AFDC applicant, determined presumptively eligible for AFDC, is in emergent need of clothing and/or household furnishings and equipment.
>
> (Ch. 6500 of the Categorical Assistance Manual of the Department.)

Since the eligibility provisions were severely restricted in the October 1973 revisions in the program, the Department has provided only about one-fifth of the total dollar aid provided to needly families under the prior program.

Plaintiffs challenge the Illinois program for administering reimbursable emergency assistance under 45 U.S.C § 606(e), Section 406(e) of the Social Security Act, as invalid for both constitutional and non-constitutional reasons. In accord with the time-honored practice of avoiding constitutional questions where a non-constitutional ground exists for resolving the case, this Court deals first with plaintiffs' statutory argument.[2]

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[2] Plaintiffs plead federal question jurisdiction, which requires that more than $10,000 exclusive of interest and costs be in controversy. 28 U.S.C. § 1331. The complaint asserts that such an amount is in controversy and defendants do not complain that jurisdiction has been improperly exercised by the district court. This Court must assure itself that the district court had jurisdiction, regardless of the positions taken by the parties, because federal courts are courts of limited jurisdiction.

Assuming without deciding that the plaintiffs cannot properly show $10,000 as to each member of the class because of the 30-day per year restriction on emergency (*Baxter* v. *Minter,* 378 F. Supp. 1213, 1216-1217 (D. Mass. 1974), there is no § 1331 jurisdiction. See generally Note, Federal Judicial Review of State Welfare Practices, 67 Colum.L.Rev. 84 (1967). Since plaintiffs here allege Civil Rights Act jurisdiction through 42 U.S.C. § 1983 and 28 U.S.C. § 1343, and since the claim is not insubstantial, the statutory claims against the state defendants, at least, may be taken pendently. See *Philbrook* v. *Glodgett,* 421 U.S. 707, 95 S. Ct. 1893, 44 L. Ed. 2d 525. Jurisdiction over the federal defendant is unavailable under the Civil Rights Act, so that the assertion of pendent jurisdiction over it is a complex and difficult jurisdictional question. See *Philbrook, supra,* at 720-722, 95 S. Ct. 1893.

However, since the plaintiffs also allege jurisdiction under 28 U.S.C. § 1361, and since this Court concludes *infra* that Section 606(e) does set forth mandatory eligibility standards in the absence of clear intent to the contrary in the federal statute or its history, mandamus jurisdiction will lie with respect to the federal defendant. Thus this Court need not reach the difficult pendent jurisdictional question. In holding Section 1361 applicable here, we are

VALIDITY OF ILLINOIS EMERGENCY ASSISTANCE PLAN

Plaintiffs first argue that defendants' program unlawfully excludes persons made eligible by the emergency assistance provisions of the Social Security Act. Plaintiffs claim that the Illinois program has unlawfully established eligibility standards narrower than those in 42 U.S.C. § 606(e) because that program provides assistance only to persons whose emergency needs fall within four limited types of crisis situations and provides no emergency assistance for families who are not applicants for or recipients of AFDC. Thus needy families who are in danger of destitution within the meaning of 42 U.S.C. § 606(e), but who are not otherwise eligible for AFDC or whose destitution came about in a manner not enumerated in Chapter 6500 of the Department's Manual, are denied emergency assistance. Plaintiffs rely especially on *Carleson* v. *Remillard*, 406 U.S. 598, 92 S. Ct. 1932, 32 L. Ed. 2d 352; *Townsend* v. *Swank*, 404 U.S. 282, 92 S. Ct. 502, 30 L. Ed. 2d 448; *Lewis* v. *Martin*, 397 U.S. 552, 90 S. Ct. 1282, 25 L. Ed. 2d 561; and *King* v. *Smith*, 392 U.S. 309, 88 S. Ct. 2128, 20 L. Ed. 2d 1118.[3] Those cases establish that a state program which restricts eligibility beyond what was intended by Congress is invalid for inconsistency with the Social Security Act. In *Townsend*, the Illinois defendants and HEW asserted that Congress authorized the states to vary eligibility requirements from federal standards. However, the Court held that once a state elected to extend benefits to 18-20 year-olds, it was required to include all those made eligible by 42 U.S.C. § 606(a)(2)(B), including college students. The other cases cited *supra* are similar. Each case involves a state's attempt to draw AFDC eligibility criteria more narrowly than the eligibility criteria set out in the Social Security Act and each attempt was rejected as invalid as contrary to the intent of Congress.

Section 406(e) of the Act extends coverage for emergency service to a family with a needy child under 21 living with any of the relatives specified in Section 406(a)(1), in a place of residence maintained by one or more of such relatives as his or their own home. However, Congress limited the reimbursement for emergency assistance for such a needy family to situations where the child is without available resources and assistance and the assistance is necessary to avoid destitution or to provide a living place in a home for such child, provided "such destitution or need for living arrangements did not arise

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mindful of the criteria set out in *City of Highland Park* v. *Train*, 519 F. 2d 681 at 691 (7th Cir. 1975, and modified July 24, 1975), for exercising mandamus jurisdiction. These criteria are satisfied in this case.

Since HEW would be practically bound by our decision, even if it were technically handed down only with respect to the state defendants, we assume that HEW would move to intervene on remand even if we had dismissed it in this Court. See *Philbrook*, *supra*, at 720-722, 95 S. Ct. 1893.

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[3] See also *Van Lare* v. *Hurley*, 421 U.S. 338, 95 S. Ct. 1741, 44 L. Ed. 2d 208; *Philbrook* v. *Glodgett*, 421 U.S. 707, 95 S. Ct. 1893, 44 L. Ed. 2d 525; *Burns* v. *Alcala*, 420 U.S. 575, 95 S. Ct. 1180, 43 L. Ed. 2d 469; and *Lascaris* v. *Shirley*, 420 U.S. 730, 95 S. Ct. 1190, 43 L. Ed. 2d 583.

because such child or relative refused without good cause to accept employment or training for employment." In our view, all children who fall within this definition are made eligible for emergency assistance.

Section 406(e) specifically permits two areas of state discretion. Thus the state is permitted to furnish emergency assistance in the form of "money payments, payments in kind, or such other payments as the State agency may specify." Also, Congress provided that a state may provide emergency aid to migrant farm workers (presumably despite residency requirements in the state plans), and may select parts of the state in which to provide emergency assistance to migrant workers (presumably despite the mandate in 42 U.S.C. § 602(a)(1) that elected programs must be administered statewide).

The state defendants and, to a lesser degree, the federal defendant insist that the language of 42 U.S.C. § 606(e)(1) does not establish standards of eligibility at all, but merely defines the maximum limits of reimbursable emergency assistance. Thus in their view Section 606(e)(1) describes what is provided, rather than who is covered. We reject this semantical argument. Similar arguments could have been made in *King, Townsend* and *Carleson* as to the eligibility provisions of the Social Security Act discussed there; yet the Supreme Court viewed the provisions as relating to eligibility. The provisions in Section 606(e)(1) discussed *supra* describe eligibility criteria for the emergency aid program. Thus the central issue in this case becomes whether Congress intended to allow the states to apply eligibility criteria that are narrower than those set out in Section 606(e)(1). If, as plaintiffs argue, Congress intended that any state which elected to participate in the emergency aid reimbursement program must provide aid to all those eligible under the provisions of Section 606(e)(1), the Illinois program is invalid since it more narrowly restricts the availability of emergency assistance. See the quotation from the Department's Categorical Assistance Manual, Ch. 6500, *supra* at 5, and the surrounding discussion. If, however, Congress intended to allow the states to adopt their own eligibility requirements, Illinois' program does not conflict with Section 606(e). Our task is to interpret the intent of Congress. In attempting to discern that intent, this Court is mindful that no special presumptions in favor of coverage are to be applied in interpreting provisions of the Social Security Act and that the normal tools of legislative interpretation are to be employed. *Burns* v. *Alcala*, 420 U.S. 575, 578, 95 S. Ct. 1180, 43 L. Ed. 2d 469.

As is often the case, the legislative history of 42 U.S.C. § 606(e) contains little information helpful as to Congressional intent on the crucial issue here. See Senate Report No. 744, 90th Cong., 1st Sess., 2 U.S. Code, Congressional & Admin. News, 2834, 3002-3004 (1967). Both sides in this case point to various portions of the legislative history for support of their positions, but nothing cited is conclusive.

We deem it worthwhile to note that it is clear from the Senate Report on the bill that Congress intended that families who were not eligible for AFDC should be eligible, as far as the federal Government was concerned, for emergency aid under Section 606(e). *Idem* at 3003. While this does not answer the question whether Congress intended the states to have the right to narrow the eligibility under Section 606(e), it does indicate that Congress was concerned about a broader group of needy children than Illinois' program covers. Moreover, it appears that

Congress was concerned with needy children who were approaching destitution from a variety of causes other than those recognized by Illinois. Thus the Senate Report states:

> The committee understands that the process of determining AFDC eligibility and authorizing payments frequently precludes the meeting of emergency needs when a crisis occurs. In the event of eviction or when utilities are turned off, or when an alcoholic parent leaves children without food, immediate action is necessary. It frequently is unavailable under State programs today. When a child is suddenly deprived of his parents by their accidental death or when the agency finds that conditions at home are contrary to the child's welfare, new arrangements and court referrals may have to be made. (*Idem* at 3002.)

While the legislative history is not conclusive of Congress' intent, it does show that there is no specific indication that Congress intended the states to be able to narrow the eligibility criteria, that Congress was much concerned with the emergency needs of all children approaching destitution, whether or not they were AFDC eligible, and that Congress considered that there was need for aid to needy children who approached destitution due to reasons other than those recognized in the Illinois program. We also note that the general tenor of the legislative history shows great concern for those families with children who are in need of emergency aid.

Defendants rely on the HEW regulation that interprets Section 406(e) of the Act to allow the states to set the criteria for eligibility, 45 C.F.R. § 233.1200 (1974). Defendants claim that this interpretation of the agency charged with administering the program is entitled to great weight, especially in the absence of a clear legislative intent in the provision's history. See *New York Department of Social Services* v. *Dublino*, 413 U.S. 405, 421, 93 S. Ct. 2507, 37 L. Ed. 2d 688; *Udall* v. *Talman*, 380 U.S. 1, 16, 85 S. Ct. 792, 13 L. Ed. 2d 616. However, another regulation promulgated by HEW after the *Townsend* decision is also relevant. 45 C.F.R. § 233.10(a)(1)(ii) applies to the chapter of the Act containing Section 406(e) and provides in part:

> (ii) A State may:
>
> (A) Provide more limited public assistance coverage than that provided by the Act *only whre the Social Security Act or its legislative history authorizes more limited coverage;* [italics added].

As has been seen, there is no clear indication in the legislation or its history indicating that Congress intended to allow the states to construct narrower eligibility requirements than those in the statute. Thus it is difficult to percive the justification for HEW's promulgation of 45 C.F.R. § 233.120. This would not be the first time that HEW has sought discretion for the states that the courts have held was not intended by Congress to be given to them. In light of these factors we do not feel it proper to rely heavily on the administrative interpretation of Section 406(e). See also *Application of Bryant* v. *Lavine*, 79 Misc. 2d 425, 359 N.Y.S. 2d 492 (Sup. Ct. 1974); *Application of Preston* v. *Barbaro*, 61 Misc. 2d 327, 305 N.Y.S. 2d 627 (Sup. Ct. 1969).

The Government notes that the *Carleson*, *Townsend*, *Burns* and *King* cases, *supra*, relied on 42 U.S.C. § 602 (a)(10) which provides that "aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals." Then the Government contends that this provision does not apply to 42 U.S.C. § 606(e) because "dependent child" is not used therein.

We believe that Sections 602(a) and 606(e) cannot be so neatly and completely severed. Section 602 sets forth what state plans must provide in order to qualify for federal reimbursement. It also contains the hearing provisions (§ 602(a)(4)), the "reasonable promptness" provisions (see *Adens* v. *Sailer*, 312 F. Supp. 923, 926 (E.D. Pa. 1970)), the state reporting provisions (§ 602(a)(6)), and others that must apply to Section 606(e) in any reasonable interpretation of the entire Act. It also appears that when Congress wished to make an exception to the generally applicable provisions of Section 602(a), it was able to do so clearly. Thus in Section 606(e)(2) Congress expressly noted that emergency assistance to migrate workers need not be statewide. This seems an apparent exception to Section 602(a)(1), requiring a state plan to be in effect in all political subdivisions of the state. The close relationship between Sections 602(a) and 606(e) leads us to believe that Congress intended that Section 606(e) be treated in the same way as Section 606(a), which also is closely related to Section 602, despite the inclusion in Section 602(a)(10) of the phrase "families with dependent children." The Supreme Court cases listed earlier in the opinion hold that Congress intended the eligibility requirements of Section 606(a) to be mandatory on the states. See, *e.g.*, *Burns*, *supra*, 420 U.S. at 578, 95 S. Ct. 1180; *Carleson*, *supra*; *Townsend*, *supra*. It therefore appears that Congress intended that the eligibility provisions of Section 606(e) be mandatory on the states, just as the courts have held with respect to the eligibility requirements of Section 606(a).

In summary, Section 606(e) is part of the same statutory scheme as Sections 606(a) and 602. The same Congressional concern with deprivation of children that brought forth the AFDC program was at the root of the

emergency assistance program as well. Since the legislative history of the latter program demonstrates continuing Congressional concern with the nation's poor children and contains no indication that its eligibility provisions are to be more in state control than its closely related sister program, we must follow the number of Supreme Court cases that have held that the eligibility provisions of the federal program cannot be narrowed by the states.

Illinois, should it elect to continue to provide an emergency assistance program in the future, will still have substantial control of its program. It will be able to choose the level of benefits that it will provide and to set the standard of need. It may reasonably limit the amounts paid out in emergency assistance, *Dandridge* v. *Williams*, 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491, but it will not be able to declare ineligible those who come within the federal definition of eligibility in Section 606(e). This Court need not establish the exact meaning of the eligibility provisions of Section 606(e) because this case requires only that the validity of the specific Illinois program be determined. The problem of setting workable definitions for the somewhat amorphous eligibility criteria in Section 606(e) may be addressed by HEW rule-making.[4] Such rule-making should aid the states in preparing programs that are in accord with the eligibility criteria set by Congress. Illinois may no longer conduct an emergency assistance program under Section 606(e) in which some of the families with needy children described in Section 606(e) are given aid and some are not. Because Illinois has accepted federal funds to operate an emergency assistance program, it is bound by the eligibility provisions of 42 U.S.C. § 606(e). This need not result in additional expense to the state, but with existing appropriations should at least result in helping a broader number of persons, although more moderately than at present.

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[4] Plaintiffs amended the conclusion of their main brief to request restitution for one of the named plaintiffs, Frances Gallman, who was allegedly eligible under the federal criteria when she was robbed of her monthly aid funds. Since we do not here decide the exact content of the emergency assistance program, but only hold that Illinois' present regulations are invalid, it would be inappropriate for us to decide whether Gallman was indeed eligible, particularly since HEW has not had an opportunity to make rules aiding the states and the courts in discerning the specific rules as to who is eligible. Accordingly, we decline to consider Gallman's request for restitution on this appeal.

Since we hold that the Illinois emergency assistance program defines eligibility more narrowly than 42 U.S.C § 606(e) and therefore is in violation of the Social Security Act, we need not consider whether the program violates the Equal Protection Clause of the Fourteenth Amendment or the Illinois Public Aid Code.

MAILING OF EMERGENCY ASSISTANCE CHECKS OUTSIDE COOK COUNTY

As noted, Section 402(a)(10) of the Act requires aid to be "furnished with reasonable promptness." Section 406(e) itself prescribes no time for delivery of emergency assistance, but a regulation of HEW requires that a state plan provide that "emergency assistance will be given forthwith." 45 C.F.R. § 233.120(2)(5). This accords with the Senate Report on the 1967 amendments showing that "immediate action is necessary" to alleviate "an immediate need" for emergency assistance. Sen. Rep. No. 744, 90th Cong., 1st Sess., 2 U.S. Code Cong. & Admin. News at 3002 (1967).

Plaintiffs have not satisfied us that Judge McMillen was wrong in stating in his March 14, 1975, order that "Up to this date there has been no evidence of delays outside of Cook County * * *." If, on remand, plaintiffs can show that payments are not delivered "forthwith" in the downstate Illinois counties, the district court should require the state defendants to adopt other methods (such as disbursing orders or preposition checks) to avoid unnecessary delays in alleviating destitution. See *Purnell* v. *Edelman*, 511 F. 2d 1248 (7th Cir. 1974); *Adens* v. *Sailer*, 312 F. Supp. 923 (E.D. Pa. 1970).[5] However, if downstate payments are quickly processed and received by mail one or two days afterwards, judicial intervention will be unnecessary.

In closing, we are not satisfied that the district court's order of March 14, 1975, failed to provide plaintiffs with adequate relief with respect to the "forthwith" requirement. On remand, that court will surely retain continuing jurisdiction or otherwise afford plaintiffs further relief if they can show the necessity therefor.

The order of March 14, 1975, is affirmed. The order of November 21, 1974, is reversed insofar as it sustained the validity of the Illinois program for emergency assistance. Costs of this appeal are awarded to plaintiffs.

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[5] Since the court ordered the same delivery procedures for the downstate counties as for Cook County, we cannot agree that the court discriminated in favor of Cook County in violation of Section 402(a)(1) of the Act and 45 C.F.R. § 250.120(a).

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption omitted in printing.]

FINAL JUDGMENT AND DECREE

This matter comes on for entry of a final judgment and decree pursuant to prior decisions of this court and pursuant to the mandate of the Court of Appeals reversing in part and affirming in part the orders of this court to and including this court's order of March 14, 1975. The court being fully advised finds and concludes as follows:

FINDINGS OF FACT

1. Except as modified herein, the factual findings of this court's memorandum decisions of November 21, 1974, February 5, March 14, August 1, and October 24, 1975 are incorporated herein as part of this final judgment.

2. The class of plaintiffs is composed of all (1) Aid to Families with Dependent Children (AFDC) recipients, (2) applicants for AFDC and (3) other families with needy children, in Illinois who are eligible for emergency assistance within the eligibility standard of § 406(e) of the Social Security Act (the Act), 42 U.S.C. § 606(e), as set out in paragraph 9 (p. 5) below.

3. Plaintiff Frances Gallman and her family met the eligibility standard of § 406(e) at the time of their application in November, 1973, to defendant Illinois Department of Public Aid (IDPA) for emergency assistance.

4. Defendants IDPA and its directors, Edelman and Trainor, have denied and continue to deny emergency assistance to plaintiff Gallman and to members of the plaintiff class who meet the eligibility standard of § 406(e) but whose emergency need arises from circumstances other than those described in defendants' regulations, IDPA Categorical Assistance Manual, Ch. 6500, since renumbered as Ch. PO 610.5.

5. The state defendants have reported to this court the length of time taken to process requests for emergency assistance, these reports having been made pursuant to the court's order of March 14, 1975. There the court required defendants to speed up the processing of emergency assistance requests from the "not uncommon" 7–10 days found by the court in its order of November 21, 1973,

so that emergency assistance requests will normally be disposed of within 24 hours. These reports show and I find as follows:

a. For requests for emergency assistance granted during the two reporting periods, May 8–June 9, 1975 and August 1–27, 1975, the periods of time taken for processing requests up to the time a check was ready to be placed in the mail or for pickup was more than one day in 88.8% (103 of 116) of cases in Cook County and in 71.6% (68 of 95) of cases in downstate counties:

	Cook	%	Downstate	%
Same day or 1 day	13	11	27	28.4
2–3 days	22	18.6	26	27.4
4–6 days	40	33.9	21	22.1
7–10 days	16	13.6	13	13.7
11–15 days	17	14.4	7	7.4
16–25 days	7	5.9	1	1.1
26 or more days	1	.8	0	0
Not ascertained	2	1.7	0	0
	118	99.9	95	100.1

b. For requests for emergency assistance granted during the two reporting periods (May 8–June 9 and August 1–27, 1975) four methods of delivery of emergency assistance checks were used: mail, pick up by client at fiscal management office, disbursing order at local office and by "C.D." (unexplained), as follows:

	Cook	*Downstate*
Mail	60	74
Disbursing Order	16	0
Pick-up at Fisc. Mgmt.	42	9
C. D.	0	12
	118	95

c. The amount of time from the date a check was ready for delivery by mail until receipt by the client during the two reporting periods was as follows:

	Cook	*Downstate*
1 day	31	34
2 days	8	6
3 days	0	1
4–6 days	0	1
7 or more days	1	3
Not ascertained	20	29
	60	74

Therefore, of those known, checks were delivered one or two days after mailing in 97.5 percent of cases in Cook and 88.9 percent downstate.

d. The reports demonstrate and the court finds that great and excessive delays continue to exist in the processing of emergency assistance checks, so that only a small percentage of checks are processed within 24 hours and delivered to the client within one or two days thereafter.

6. Since the mandate of the Court of Appeals was returned to this court, the state defendants have reported that they plan imminently to withdraw from the emergency assistance program authorized by section 406(e) of the Act and have further reported that they plan to provide the same limited emergency assistance available under their program which was challenged and found unlawful in this lawsuit. In so doing, defendants intend to claim federal funds for this emergency assistance program under §§ 402 and 403(a)(1) (regular AFDC funds) of the Act.

7. The state defendants have not submitted to Defendant United States Department of Health, Education and Welfare an amendment to their state plan under Title IV-A of the Act, as required by 45 C.F.R. §§ 201.3 and 205.5, setting out the proposed changes stated in Paragraph 6 above, nor have they received approval of such changes from Defendant H.E.W.

CONCLUSIONS OF LAW

8. As defined in paragraph 2 above, this is a proper class action under Rule 23 of the Federal Rules of Civil Procedure.

9. The state defendants have violated and continue to violate § 406(e) of the Act in denying emergency assistance to plaintiff Frances Gallman and members of the class who are eligible for emergency assistance as defined in § 406(e), to wit: families with a needy child (i) under the age of 21, (ii) who is living with any of the relatives specified in § 406(a)(1) of the Act in a place of residence maintained by such relative as a home, (iii) where such child is without available resources, (iv) where emergency assistance is necessary to avoid destitution of or to provide living arrangements in a home for such child, and (v) where such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment.

10. Because defendants' emergency assistance program, Categorical Assistance Manual Ch. 6500 (PO 610.5), limits its eligibility more narrowly than § 406(e) permits, its enforcement and operation are unlawful.

11. Congress, in §§ 406(e) and 403(a)(5) of the Act, has determined the terms of eligibility and funding for an emergency assistance program. The state defendants' effort to avoid the eligibility standards of § 406(e) by claiming funding for emergency assistance from funds available for AFDC or for any other federally funded program is contrary to the clear intent of the Act and a violation of § 406(e)(1).

12. Defendant United States Department of Health, Education and Welfare has violated §§ 406(e) and 402(b) of the Act, 42 U.S.C. §§ 606(e) and 602(b), and its own regulations, 45 C.F.R. § 233.10(a)(1)(ii)(A), in approving and funding Illinois' emergency assistance plan which denies such assistance to members of the plaintiff class made eligible by § 406(e).

13. Defendant H.E.W., furthermore, may not approve or fund a state's emergency assistance program, whether designated as a "special need" or otherwise, except as authorized by § 406(e).

14. The state defendants have violated and continue to violate § 406(e) of the Act and regulations promulgated thereunder, 45 C.F.R. § 233.120(a)(5), which require that emergency assistance be given forthwith, by causing, and

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failing to correct after this court's order of November 21, 1974, serious delays in providing emergency assistance to members of the plaintiff class.

IT IS THEREFORE ORDERED AND DECREED, as follows:

A. Defendants, the Illinois Department of Public Aid, Joel Edelman and James L. Trainor, their successors in office, agents, employees and assigns are enjoined, so long as Illinois receives federal funding under Title IV-A of the Social Security Act, from claiming reimbursement for emergency assistance (however designated) under any other section of the Act than §§ 406(e) and 403(a)(5) and are enjoined from using any other means of limiting eligibility for emergency assistance more narrowly than the provisions of § 406(e), and are further enjoined from denying emergency assistance to plaintiff Frances Gallman and to any member of the plaintiff class with a needy child

(i) who is under the age of 21,

(ii) who is living with any of the relatives specified in § 406(a)(1) of the Act in a place of residence maintained by such relative as a home,

(iii) where such child is without available resources,

(iv) where emergency assistance is necessary to avoid destitution of or to provide living arrangements in a home for such child, and

(v) such destitution did not arise because such child or relative refused without good cause to accept employment or training for employment.

In furtherance of this injunction these defendants are specifically directed to do the following:

1. Within 7 days from entry of this order, defendants shall file with the court and with defendant H.E.W. amendments to its AFDC Categorical Assistance Manual (and to forms and other necessary instructions to staff) consistent with the terms of this order. These amendments shall

(a) Set forth the availability of emergency assistance to families with a needy child in the terms set out in (i)–(v) above.

(b) Specify that non-AFDC eligible children are eligible for emergency assistance if they meet the eligibility standards of (i)–(v) above.

(c) Pending compliance by H.E.W. with Paragraph B (p. 10) below, establish a definition of the terms "lack of available resources" and "necessary to avoid destitution" which are compatible with providing emergency assistance when a needy child is approaching destitution.

(d) Establish amounts of assistance, forms of payment and types of services to be provided.

(e) Set forth examples of common forms of destitution to be avoided by provision of emergency assistance, including, but not limited to imminent eviction, imminent termination of utilities, and lack of food, basic clothing and household furnishings.

(f) Set forth examples of common causes of such destitution, including but not limited to fire and other disaster causing homelessness or damage to personal possessions, eviction, theft, abandonment by a parent, delays in awaiting normal processing of AFDC applications, failure to receive AFDC assistance due to administrative error and failure to receive other forms of income.

2. Defendants' submission pursuant to paragraph A.1 (p. 8) herein shall not define eligibility more narrowly than § 406(e) of the Act and shall be equitable as required by 45 C.F.R § 233.10(a)(1)(ii).

3. Defendants shall review within 30 days from entry of this order the IDPA hearing decision, No. 73-4155, of March 18, 1974, denying emergency assistance to plaintiff Frances Gallman in the circumstances alleged in this complaint, and shall enter a new decision in compliance with the Court of Appeals decision and this order. Such decision shall be promptly filed with this court and defendants shall report all further action including payment made with respect to her administrative appeal.

4. In order to assist the parties and this court with further proceedings for compliance the state defendants shall, within 30 days of the entry of this order, commence to register all requests by needy families with children for emergency aid, categorizing such requests by a) type of need, b) cause of need, c) department response, and d) reasons for denial if denial of the request occurs, and shall submit to this court monthly until further order of court the information obtained from such registry.

5. Plaintiffs shall have 7 days after submission of the materials required in paragraphs A.1-4 herein in which to file comments or objections.

B. Defendant U.S. Department of Health, Education and Welfare is hereby enjoined from approving state plans for emergency assistance which limit eligibility more narrowly than § 406(e) of the Act or funding an emergency assistance program (however designated) under any provision of the Act other than §§ 406(e) and 403(a)(5). In furtherance of this injunction, H.E.W. is specifically ordered as follows:

1. Within 60 days from entry of this order, it shall file with the court proposed regulations governing emergency assistance, which proposed regulations shall be in accord with the opinion of the Court of Appeals, with this order and with 45 C.F.R. § 233.10(a)(1)(ii)(A), and shall include, inter alia, definitions of such terms as "necessary to avoid destitution" and "lack of available resources" which are compatible with providing emergency assistance when a needy child is approaching destitution.

(a) Plaintiffs shall have 15 days after submission of the proposed regulations in which to comment.

(b) Upon approval by this court and completion of procedures required by law for promulgation of regulations, defendant H.E.W. shall publish the regulations in the Federal Register and Code of Federal Regulations.

2. Within 90 days after submission of Illinois' plan for emergency assistance pursuant to Paragraph A (pp. 7-9) above, H.E.W. shall notify the court and the parties of its action in approving or disapproving the amended plan in accordance with standards set by the Act, this order and the decision of the Court of Appeals.

C. Defendants Illinois Department of Public Aid, Joel Edelman and James L. Trainor, their successors in office, employees, agents and assigns are enjoined from failing to ensure that emergency assistance grants are given forthwith to members of the plaintiff class, and are specifically directed in furtherance of this injunction to modify their procedures to provide as follows:

1. Caseworkers and necessary supervisory and other staff shall give preference to requests for emergency assistance over all other work assignments. Within 24 hours of a request staff shall verify need, determine eligibility and follow all necessary procedures to secure issuance of the emergency assistance payment, whether by disbursing order or check. This time period may not be extended except —

(a) for the time attributable to delay caused by an applicant's failure to provide essential information within his or her understanding and immediate control, or

(b) by waiver signed by the applicant for emergency aid.

Delay based upon an applicant's fault in (a) above shall be clearly described in the applicant's case record maintained by the department. In a case of waiver, the original waiver shall be maintained in the case record and the applicant shall be furnished a copy.

2. An individual requesting emergency assistance shall be advised orally and in writing during the initial interview that if eligible he or she may receive a disbursing order at the local office that day or within 24 hours of the request or, if the client prefers, a check may be mailed from Springfield or Chicago to an address provided by the client.

3. An applicant for emergency assistance not yet regularly receiving AFDC, as well as an applicant for emergency assistance currently receiving AFDC, shall have his or her emergency assistance request acted upon within the time limits of paragraph 1 above.

4. Defendant Trainor shall amend the Department's Categorical Assistance Manual to incorporate paragraphs B 1, 2 and 3 above.

(a) A copy of the amendment shall be submitted to the court not later than 15 days from entry of this order. Plaintiffs may within 10 days thereafter file comments in response thereto.

(b) Defendants shall distribute the bulletin or amendment to casework staff within 10 working days after receipt of the court's approval of it.

(c) The amendment issued in compliance with this order shall be filed with the court and shall not be modified or in any way changed without obtaining leave of court beforehand.

5. For each month beginning with the first month following entry of this order and continuing thereafter until further order of the court, defendants shall report their compliance with this order in a form substantially similar to defendants' reports of June (undated) and September 18, 1975, with additional information showing the cause for any delay greater than 24 hours from the time of request until a disbursing order or check is ready for delivery.

D. Defendant Trainor is further ordered to give notice to class members by the following methods:

1. In the next regular mailing for AFDC warrants, defendants shall enclose a notice setting out in easily understandable language the changes in emergency assistance affected by this order.

2. Within 60 days of entry of this order, defendant shall cause to be prominently displayed in all public areas of each public aid office in Illinois a poster describing in easily understandable language the material terms of this order.

3. The notice described in paragraph 1 and the poster described in paragraph 2 shall describe the type of need and possible circumstances under which emergency assistance is available and the conditions of eligibility for the program.

E. This order and compliance with this order shall not be interpreted as altering or in any manner affecting other obligations defendants have with respect to providing prompt assistance to AFDC applicants and recipients and/or providing emergency assistance to AFDC applicants and recipients pursuant to other judgments rendered prior to the date of this order or pursuant to state law.

F. This judgment shall be binding on defendants, their officers, agents, attorneys, servants, employees and their successors, and upon those persons in active concert or participation with them who receive actual notice of the judgment by personal service or otherwise.

G. This court shall retain continuing jurisdiction over this cause for purposes of enforcement.

H. Plaintiffs are awarded their costs in this matter.

Thomas R. McMillen,
United States District Judge

Date:..

December 1, 1975

Venus Mandley, et al., v. James L. Trainor, et al.
Motion for Entry of Final Judgment and Decree

* * *

Plaintiffs' motion for entry of final judgment and decree is denied.

* * *

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption omitted in printing.]

MOTION TO DISMISS

NOW COME the Defendants by their attorney WILLIAM J. SCOTT, Attorney General of the State of Illinois, and move this Honorable Court pursuant to Rules 12(b)(2) and 12(h)(3) of the Federal Rules of Civil Procedure to dismiss this cause of action. In support of this their motion Defendants state as follows:

1. Effective November 21, 1975, the State of Illinois has withdrawn from participation in the Emergency Assistance Program established under Title IV of the Social Security Act, § 406(e), 42 U.S.C. § 606(e).

2. The particulars of this withdrawal are set out in the attached Affidavit of Barbara Sticher. (Attachment No. 1)

3. Notice of this withdrawal from participation in the Federal Program has been given to the United States Department of Health, Education and Welfare by Defendant Trainor, who is Director of the Illinois Department of Public Aid. (Attachment No. 2)

4. Pursuant to the terms of the notice given to HEW and the Affidavit of Barbara Sticher, the Department of Public Aid, effective the 24th of November, is no longer receiving Federal Emergency Assistance funds, nor will the Department request or expend such funds in the future, except in the instance where services were provided prior to November 21st, 1975.

5. There is no reasonable probability of a return to the conduct complained of by the Plaintiffs herein.

6. No disputed question of law or fact remains to be determined.

7. The parties lack a legally cognizable interest in the outcome of this law suit.

8. This law suit has become moot.

9. The law suit, which has become moot, is neither a case nor controversy within the meaning of Article III of the United States Constitution.

10. This Court lacks jurisdiction as no case or controversy exists between the parties.

In support of this their Motion, which incorporates the two attachments referred to above, Defendants move that this cause of action be dismissed.

Respectfully submitted,
/s/ WILLIAM J. SCOTT

WILLIAM J. SCOTT
Attorney General of Illinois

GEORGE L. GRUMLEY
Special Assistant
Attorney General
(Of Counsel)
100 North LaSalle Street
Suite 1600
Chicago, Illinois 60602
341-4693

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

[Caption omitted in printing.]

AFFIDAVIT

I, Barbara Sticher, Chief, Bureau of Fiscal Management of the Illinois Department of Public Aid, being duly sworn do hereby state:

1. On November 21, 1975 I was given a copy of a letter from the Director of the Department of Public Aid to the Department of Health, Education, and Welfare, in which it was stated that the Department would immediately cease all activities and requests for federal reimbursement pursuant to the "Emergency Assistance" Program, § 406(e) of the Social Security Act.

2. On Friday, November 21, 1975, I directed that, commencing Monday, November 24, 1975, no requests for funds pursuant to § 406(e) of the Social Security Act for assistance requested on or after November 24, 1975 should be funded pursuant to § 406(e) of the Social Security Act.

3. I have directed that no additional § 406(e) federal funds be drawn for the balance of the October through December quarter of the current fiscal year.

4. The Department has submitted to the Department of Health, Education, and Welfare revised estimates for the January through March quarters of the current fiscal year to reflect the fact that the Department has eliminated all activities pursuant to § 406(e) of the Social Security Act as of November 24, 1975.

/s/ BARBARA R. STICHER

BARBARA STICHER, Chief
Bureau of Fiscal Management

[Jurat omitted in printing.]

EXHIBIT 2

STATE OF ILLINOIS
DEPARTMENT OF PUBLIC AID

JAMES L. TRAINOR
Director

316 South Second Street
Springfield, Illinois 62762

November 21, 1975

Mr. Clyde V. Downing
Acting Regional Commissioner
Social and Rehabilitation Service
Department of Health, Education,
and Welfare – Region V
300 South Wacker Drive
Chicago, Illinois 60606

Dear Mr. Downing:

This letter constitutes the Illinois Department of Public Aid's official notification to the Department of Health, Education, and Welfare that Illinois shall not request reimbursement pursuant to § 406(e) of the Social Security Act (42 U.S.C. § 606(e)) for any expenses incurred after November 21, 1975, as the Department is terminating its program for "Emergency Assistance to Needy Families with Children" existing pursuant to said § 406(e). The Department will process requests for Emergency Assistance pursuant to said § 406(e) up to and including November 21, 1975 and shall request federal reimbursement for such requests made by that date but paid after November 21. In no event shall the Department be requesting reimbursement for any expenses pursuant to said statute where the request for "Emergency Assistance" was made after November 21, 1975.

Adjusted estimates will be submitted.

We will soon be writing to you formally requesting clarification of aspects of the Emergency Assistance Program.

Very truly yours,

/s/ JAMES L. TRAINOR
James L. Trainor
Director

JLT:san
cc: Mr. John Kelly

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption omitted in printing.]

MOTION

The Secretary of Health, Education and Welfare by Samuel K. Skinner, United States Attorney for the Northern District of Illinois, hereby moves to dismiss the above-captioned cause pursuant to Rules 12(b)(2) and 12(h)(3) of the Federal Rules of Civil Procedure on the ground that the above-captioned action is moot.

Respectfully submitted,

/s/ SAMUEL K. SKINNER

SAMUEL K. SKINNER
United States Attorney

[Affidavit of mailing omitted in printing.]

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Captions omitted in printing.]

PLAINTIFFS' ANSWER TO DEFENDANTS' MOTIONS TO DISMISS

Plaintiffs by their attorneys answer the motions to dismiss on grounds of mootness filed by defendants Trainor, the Illinois Department of Public Aid and the United States Department of Health, Education and Welfare on December 1 and 8, 1975, respectively, as follows:

Plaintiffs deny that the Illinois defendants have withdrawn from a federally funded emergency assistance program and deny that the federal defendant is not now providing (and in the future will not continue to provide) federal funds under the Social Security Act (Act) to the Illinois defendants for a program declared illegal by the court of appeals.

Plaintiffs further answer that defendants are attempting to deceive this court and the court of appeals by purporting to withdraw from the emergency assistance program created by Congress in § 406(e) of the Act while at every moment they are maintaining the same emergency assistance program, with all its discriminations found to be illegal, with federal funds secured under § 402 of the Act [regular AFDC funds].

Plaintiffs aver that this is a sham and a purloining of federal funds which cannot be tolerated by a federal court of equity. Plaintiffs further aver that defendants' behavior is obdurate and in bad faith which entitles plaintiffs to an award of damages and attorneys fees.

Specifically, plaintiffs answer defendants allegations made in support of their mootness motions as follows:

ANSWER TO DEFENDANT U. S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

1. Plaintiffs deny that this court lacks jurisdiction over the federal defendant or the subject matter. Plaintiffs deny that this action is moot. Plaintiffs further aver that the federal defendant intentionally and in conspiracy with the Illinois defendants has failed to reveal certain facts which establish that the federal defendant intends to approve and fund and in fact has approved and is funding the same Illinois emergency assistance program as was declared unlawful by the federal court of appeals in this lawsuit, and that Illinois in complicity with the federal defendant intends to operate and in fact is operating the same emergency assistance program declared illegal.

ANSWER TO DEFENDANTS TRAINOR AND THE ILLINOIS DEPARTMENT OF PUBLIC AID

1. Plaintiffs deny the facts asserted in paragraph 1 of the motion and further aver that the Illinois defendants continue to operate their Emergency Assistance Program and continue to claim federal funds therefor.

2. Plaintiffs have insufficient knowledge either to admit or deny the facts asserted in the Affidavit of Barbara Sticher incorporated into paragraph 2 of the motion and further aver that the affidavit is insufficient in law because the affidavit fails to lay a proper foundation for the facts attempted to be proved by the affidavit, including the affiant's competence to testify concerning the material facts asserted by her, and plaintiffs aver that in fact the affiant is not competent to testify to such facts.

3. Plaintiffs have insufficient knowledge either to admit or deny the facts asserted in paragraph 3 of the motion and further aver that the "notice" set out in Attachment No. 2 to defendants' motion is not in compliance with H.E.W. regulations controlling amendments to a State Plan for Aid and Services for Needy Families With Children. 45 C.F.R. §§ 201, et seq.

4. Plaintiffs deny the facts asserted in paragraph 4 of the motion and further aver that defendants have since November 24, 1975, claimed and will continue thereafter to claim federal funds for emergency assistance payments and services provided to members of the plaintiff class prior to and after November 21, 1975.

5. Plaintiffs deny the facts asserted in paragraph 5 of the motion and further aver that defendants are currently engaging in and will continue to engage in the conduct complained of in plaintiffs' amended complaint. In support of this statement, plaintiffs further state as follows:

a. Plaintiffs attach hereto and incorporate herein *Plaintiffs' Exhibit 1* to this Answer, which is Defendant Trainor's report to the Illinois Legislative Advisory Committee on Public Aid concerning compliance with the court of appeals' decision in the within case. *Plaintiffs' Exhibit 2,* which is a motion made and passed by the Illinois Legislative Advisory Committee on Public Aid on November 17, 1975, and *Plaintiffs' Exhibit 3,* which is the affidavit of Michael F. Lefkow pertaining to Plaintiffs' Exhibits 1 and 2.

b. Plaintiffs call the court's particular attention to Exhibit 1 in which Defendant Trainor sets forth three alternatives with respect to the court of appeals' decision, one of which is Alternative B. Alternative B proposed to "Eliminate the 606(e) Emergency Assistance Program" and it was rejected: "The Department, although believing this alternative to be legally acceptable, finds this alternative totally unacceptable."

c. In light of Plaintiffs' Exhibits 1, 2 and 3, plaintiffs aver that defendants have not eliminated their Emergency Assistance Program as set out in their motion to dismiss.

d. Plaintiffs further aver that the Illinois defendants intentionally and in conspiracy with the federal defendant H.E.W. have failed to reveal certain facts which establish that the Illinois defendants intend to operate and in fact are operating the same emergency assistance program as was declared unlawful by the federal court of appeals in this lawsuit, that the Illinois defendants intend to claim and in fact are claiming federal funds for that illegal program, and that defendant Department of H.E.W., in complicity with this evasion of the court of appeals' decision, intends to authorize federal monies to be disbursed for Illinois' unlawful program.

6. Plaintiffs deny the assertion in paragraph 6 of the motion and to the contrary assert that important questions of both fact and law exist and that this court must set this matter for an evidentiary hearing to determine the facts before a ruling can be entered on the motions to dismiss. Plaintiffs further aver that if final judgment for plaintiffs is not entered because the court finds the defendants are not and do not intend to claim, use and disburse federal funds for an emergency assistance program, the following issues must be decided by the court:

(a) Whether Illinois law, Ch. 23, Ill. Rev. Stat., § 12-4.5, prohibits the state defendant from refusing to claim federal funds available for an emergency assistance program and if that is not resolved in plaintiffs' favor;

(b) Whether the state defendants' discriminations, found illegal under the Social Security Act by the court of appeals, violates the Equal Protection Clause of the Fourteenth Amendment; and if that is not resolved in plaintiffs' favor;

(c) Whether the state defendants' emergency assistance program satisfies the requirements of Illinois law, Ch. 23, Ill. Rev. Stat., § 12-8, for an emergency assistance program.

7. Plaintiffs deny the assertions of paragraph 7 and to the contrary assert that plaintiffs continue to have a legally cognizable interest in this lawsuit.

8. Plaintiffs deny the assertions of paragraph 8 and to the contrary assert that this case is not moot and that plaintiffs are entitled to final judgment in their favor.

9. Plaintiffs deny the assertions of paragraph 9 and to the contrary assert that a case of controversy continues to exist between plaintiffs and defendants and that plaintiffs are entitled to final judgment in their favor.

10. Plaintiffs deny the assertions of paragraph 10 and to the contrary assert that this court has jurisdiction and is obliged to enter final judgment on behalf of plaintiffs.

WHEREFORE, plaintiffs pray that the motions to dismiss be denied at once, or alternatively that this matter be set down for hearing to determine the facts, which plaintiffs believe will show that they are entitled to final judgment in their favor and that the motions to dismiss must be denied. Plaintiffs further pray for an award of damages and attorney fees because of the defendants' bad faith and obdurate behavior.

/s/ MICHAEL F. LEFKOW
Michael F. Lefkow, one of the
attorneys for plaintiffs.
STEPHEN G. SELIGER
Cotton, Watt, Jones, King & Bowlus
One IBM Plaza
Chicago, Illinois 60611.

MICHAEL F. LEFKOW
4655 South Michigan Avenue
Chicago, Illinois 60653

EXHIBIT 1

10-30-75

I. STATUS OF LITIGATION

A. The Federal District Court ruled that the scope of the Department's 606(e) Emergency Assistance Program was legal, but it retained jurisdiction to supervise the speed of delivery of Emergency Assistance.

B. On appeal, the U. S. Court of Appeals for the Seventh Circuit ruled that the program was illegal, as it restricted the persons eligible for Emergency Assistance to a group smaller than all persons eligible for AFDC. The opinion made clear that the Department had the option at any time to discontinue its 606(e) program.

C. The Department petitioned the Court for a Stay of the issuance of the Mandate and a clarification of the Order so as to allow the Department to seek Supreme Court review of the Seventh Circuit's opinion while being protected against contingent liability. Such a Stay, if granted, would have allowed the Department to maintain its current Emergency Assistance Program during the Appellate process. The Seventh Circuit denied such Petition for Stay.

II. ALTERNATIVES

A. Maintain the 606(e) Program.

Because of the denial of the Stay, the District Court can now be expected to direct the Department (if it decides to continue the program) to draw up a new Emergency Assistance plan affording eligibility for Emergency Assistance to *all* persons eligible for AFDC. Under our current Emergency Assistance Program, Emergency Assistance is limited, in general, to persons who have been burned out of their homes. The Seventh Circuit's opinion would require the Emergency Assistance Program to be offered to any AFDC recipient in a situation of financial destitution, thereby including a person who alleged that they have had cash stolen or even arguably those persons who have become destitute by gambling away their assistance money. The Seventh Circuit's opinion implied that the Department could "reasonably" limit its expenditures under an Emergency Assistance Program. But even if the Department could so limit (and the Department feels the Plaintiffs would argue against any such limitations), the results would be to divide a limited amount of Emergency Assistance money among a very expanded group of individuals, thus reducing the amount of assistance paid in each individual case to a meaninglessly small amount. The agency is thus faced with the prospect, if it continues the program, of potentially unlimited financial expenses, if it meets actual need in Emergency Assistance payments, or the payment of meaninglessly small amounts (and the possibility of legal challenge and subsequent mandatory order of additional financial payments).

The Department spent approximately $500,000 on its 606(e) program for which it requested federal reimbursement during fiscal year 1975. Prior to the Flat Grant, when the 606(e) Emergency Assistance Program had a wider scope, the Department had spent in the neighborhood of one and one-half million dollars annually for which it applied for federal reimbursement. As the definition of Emergency Assistance would have to be even wider than the definition had been prior to Flat Grant, and as the number of AFDC recipients has increased, the one and one-half million dollars would constitute a significant under-estimate of what the program would cost. Because of the open ended nature of the definition of "eligibility" and "destitution", it is impossible to project any limitations on the maximum cost of the program.

B. Eliminate the 606(e) Emergency

Assistance Program.

Under the law we are entitled to eliminate the program. Plaintiffs have argued in the lawsuit that there is a state law requirement for an Emergency Assistance Program. The Department does not believe this argument to be true. In any event, if such a requirement exists, the program would not have to be of such breadth as the program required by the Seventh Circuit's opinion.

The Department, although believing this alternative to be legally acceptable, finds this alternative totally unacceptable. The Department believes that certain Emergency conditions, such as homelessness through burnouts are needs which the Department of Public Aid clearly ought to meet and the Department would not wish to curtail its ability to do so.

C. Eliminate 606(e) Program and Create a Program for Meeting Emergent Burnout Cases to be Funded Under Section 602 and Section 603.

This is the alternative recommended by the Department. IDPA proposes to create a special need item (for which it would apply to the Federal Government for reimbursement at the usual 50% rate) as part of the regular AFDC program. Such a program would not cost the Department significantly more than the present program as the only increase in expenditures would be for people who were burned out more than once in a 12-month period. (Payments for two emergencies to the same receiving unit within a 12-month period are not reimbursable under the Section 606(e) provisions.) Should for some reason the Federal Government protest the creation of such a special need item, the situation would have to be reevaluated. At the present time we believe the Federal Government would approve funding such a special need program.

Simultaneously, we would request (as the Seventh Circuit suggested) that HEW clarify its 606(e) Emergency Assistance Program. There are aspects of a 606(e) program that we feel superior to a special need program and we would prefer, if so allowed, to maintain the 606(e) Emergency Assistance Program of the present scope.

Finally, an additional reason for this recommendation is that the District Court has retained jurisdiction over the entire matter to supervise our speed of delivery. If the District Court were to rule that we were legally required to maintain a delivery system that we could not fulfill, we would have to eliminate the program in any event. This rapidity of delivery issue also is one in which we could ask clarification from the Department of Health, Education and Welfare, and we would be in a better position upon such clarification to decide if a better position upon such clarification to decide if a new 606(e) Emergency Assistance Program should be maintained.

EXHIBIT 2

Move that the Legislative Advisory Committee On Public Aid approve for a 5 month period the plan as recommended by Director Trainor to handle emergency burn-outs to be funded under Section 602 and 603 and to report back to the Committee at its April 1976 meeting with the results of this program and his recommendation to handle other special emergency needs which may not have been met; and that Director Trainor request from H.E.W. clarification of its emergency assistance program as suggested by the United States Court of Appeals; and that Director Trainor investigate and study a purely State program to define and meet emergency needs; and that Director Trainor investigate and study the feasibility of creating a special catastrophic occurrence as a special need under the flat grant program.

EXHIBIT 3

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption omitted in printing.]

AFFIDAVIT OF MICHAEL F. LEFKOW

I, MICHAEL F. LEFKOW, being first duly placed upon affirmation, state as follows:

1. I have knowledge of the facts contained herein and could testify competently thereto if called as a witness.

2. On or about November 11, 1975, I received through the United States mail a notice from the State of Illinois Legislative Advisory Committee on Public Aid announcing that it would meet on November 17, 1975, to consider an agenda which included as item number III, "IDPA EMERGENCY ASSISTANCE PROGRAM (MANDLEY v. TRAINOR, U. S. COURT OF APPEALS DECISION." The agenda and notice are attached hereto as Exhibits A and B respectively.

3. The Legislative Advisory Committee is created by Illinois law, Ch. 23, Ill. Rev. Stat., § 12-14 (statute attached as Exhibit C), and has 12 members: six senators and six representatives.

4. On Monday, November 17, 1975, I attended a meeting of the Legislative Advisory Committee on Public Aid which commenced at 1:00 p.m. in Room 1-A of the State Office Building at Springfield, Illinois. Eight committee members responded present to the roll call of members.

Also present were Mr. James L. Trainor, Director of the Illinois Department of Public Aid (IDPA) and defendant herein, members of his staff, and members of the public. A stenographic record of the proceedings was made.

4. When the Committee reached agenda item number III, the Chairman, Senator Donald A. Moore, asked defendant Trainor to present the IDPA's recommendation on how the IDPA proposed to comply with the court of appeals decision in this case. Defendant Trainor directed the members' attention to his three-page recommendation dated 10-30-75 (attached hereto as Plaintiffs' Exhibit 1), previously distributed to the Committee with a cover letter, and paraphrased the contents. Defendant Trainor stated that he rejected withdrawal from the emergency assistance program; that elimination of the emergency assistance program was totally unacceptable to the IDPA. Defendant Trainor further stated that the IDPA could and would maintain the same emergency assistance program it now has by applying for federal funds under §§ 602 and 603 [§§ 402 and 403 of the Social Security Act (Act)]. Defendant Trainor further stated that he believed the U. S. Department of Health, Education and Welfare, also a defendant herein, would approve this plan and disburse federal funds to the IDPA for its emergency assistance program under §§ 602 and 603 rather than under § 606(e) [§ 406(e) of the Act].

5. After several committee members briefly questioned defendant Trainor, Senator Monroe L. Flinn read a written motion to approve defendant Trainor's plan to receive federal funds under §§ 602 and 603. The motion was seconded and upon a vote was carried, 7 ayes, 1 nay. Mrs. Gail E. Chesnut, Executive Secretary of the Committee, provided me with a copy of the motion, attached as Plaintiffs' Exhibit 2, after the meeting adjourned.

6. Subsequent to the meeting Senator Donald A. Moore identified for me Plaintiffs' Exhibit 1 as a copy of the original 10-30-75 recommendation forwarded to him by defendant Trainor.

7. Further affiant sayeth not.

MICHAEL F. LEFKOW

[Jurat omitted in printing.]

EXHIBIT A

LEGISLATIVE ADVISORY COMMITTEE ON PUBLIC AID

Monday, November 17, 1975 – 1:00 p.m.
Room A-1, State Office Building

I. Roll Call of members.

II. Preliminary review of Medicaid hearings held on October 15th and 16th.

III. IDPA Emergency Assistance Program (Mandley v. Trainor, United States Court of Appeals decision.

IV. Review of override of Governor's veto of LAC Bills.

V. Progress report on follow-up of problems of delayed payments by IDPA to Cook County, Oak Forest Hospitals and investigation of the Von Solbrig Hospital and Northeast Community Hospital.

VI. Review of IDPA Regulations, defining SB 1147's language governing ages 18–21 living independently.

VII. Testimony by Assistant State's Attorney, St. Clair County, Rosa Gossage on progress in prosecuting welfare fraud cases at county level.

VIII. Review of progress by IDPA and Office of Attorney General in enforcing claims and penalties including child support payments as provided in the Public Aid Code.

IX. Review of the administration of Federal Food Stamps Program.

X. Review of the status of Budget Counseling and Medichek Program.

XI. Review of the General Assistance Program.

EXHIBIT B

STATE OF ILLINOIS

LEGISLATIVE ADVISORY COMMITTEE ON PUBLIC AID

Room 4c – State Office Building
Springfield, Illinois 62706
Telephone: 217/782-7761

November 7, 1975

MEETING NOTICE

The next meeting of the Legislative Advisory Committee On Public Aid will be held on Monday, November 17, 1975 at 1:00 P. M. in Room A-1 of the State Office Building.

Enclosed is the Agenda for the meeting.

Sincerely,
/s/ DON A. MOORE
Don A. Moore, Chairman

EXHIBIT C

C. Legislative Advisory Committee

§ 12-14. Membership – Powers and Duties.

A legislative Advisory Committee on Public Aid, composed of 6 members of the House of Representatives appointed by the Speaker thereof and 6 members of the Senate appointed by the President thereof, shall exercise the powers and duties herein prescribed relevant to the policies and administration of the public aid programs established by this Code.

No more than 3 members appointed from each House of the General Assembly shall be of the same political party. The members shall be appointed in each odd-numbered year prior to July 1.

[Affidavit of service omitted in printing.]

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption omitted in printing.]

SUPPLEMENT AND AMENDMENT TO PLAINTIFFS' ANSWER TO DEFENDANTS' MOTIONS TO DISMISS

Plaintiffs by their attorneys supplement and amend their answer to the defendants' motions to dismiss with Plaintiffs' Exhibits 4 and 5.

Plaintiffs' Exhibit 4 is a copy of defendant Trainor's testimony to the State of Illinois Legislative Advisory Committee on Public Aid which relates his decision not to abandon, but rather to continue, federal funding of defendant Illinois Department of Public Aid's emergency assistance program without removing the discriminations held illegal by the court of appeals. He intends to block further judicial review of his illegal conduct by temporarily suspending funding the emergency assistance program under § 406(e) and instead will fund it under § 402 for an interim period. His conduct in this court – revealing only one-half of his plan – is in furtherance of the scheme he proposed to the Illinois legislators and is a deliberate attempt to deceive this court and evade the court of appeals' decision.

Plaintiffs' Exhibit 5 is the affidavit of plaintiffs' counsel, Michael F. Lefkow, which authenticates plaintiffs' Exhibit 4.

/s/ MICHAEL F. LEFKOW

One of the Attorneys
for Plaintiffs.

EXHIBIT 4

* * *

Federal, but the actual payment for exams, laboratory work, et cetera, is a Medicaid function and I think is Federal funds. I know a large part of it is, I don't know if it is one hundred percent.

CHAIRMAN MOORE: Thank you very much, Doctor. I know that the Committee is aware that you have one of the only operational PSRO's in the State. The Committee is concerned about preventive medicine. There is a problem. When you get a child at a very early age we can ultimately, hopefully, get him and save the State a lot of money in the future, and we appreciate your starting such a pilot program. Thank you, again, for coming down.

DR. RAY: Yes, sir.

CHAIRMAN MOORE: Let's go to Item III – Illinois Department of Public Aid Emergency Assistance Program, *Mandley versus Trainor*, U. S. Court of Appeals decision.

Director Trainor, I think – may I see a show of hands of individuals who desire to make statements on this particular question right now?

I know I do have a memorandum from the Illinois Welfare Rights Organization. I know the members of the Committee, Director, did receive the memorandum you had sent to me. Perhaps we could hear from the opponents here on this matter and then perhaps you could rebut at that time and go into your proposal.

A memorandum was delivered to me today by Mr. Lefkow, one of the Legal Aid Attorneys.

Who would like to say a few words on this matter?

MR. LEFKOW: My name is Michael Lefkow. I do not intend to address the Committee, other than to inform it that Mrs. Ruby Mabry, who is the Chairwoman of the Illinois Welfare Rights Organization, which is the plaintiff in the lawsuit, had this fact sheet prepared, and believes that it is a fact sheet, and I think the Committee is well aware of the position, or the stand of the State Welfare Rights Organization and that there should be a fully Federally funded emergency assistance program, so I hope the Committee will excuse Mrs. Mabry. There was, apparently, a death in the family and she was called to the State of Oklahoma.

CHAIRMAN MOORE: Did you prepare the statement, or was it prepared by someone else?

MR. LEFKOW: The statement was prepared by the Illinois Welfare Rights Organization. I am General Counsel for that organization.

CHAIRMAN MOORE: I have just one very fast question. What emergency needs must be met? I am looking at question number 3. "Food, clothing and shelter are among the basic needs that must be met."

Where did that statement come from?

MR. LEFKOW: That is Mrs. Mabry's statement, I believe.

CHAIRMAN MOORE: Is there a Federal regulation that sets forth the basic needs as being food, clothing and shelter, to your knowledge?

MR. LEFKOW: I think that it might be inappropriate for me to testify as to, Senator Moore, any of the matters. I just really wanted to advise the Committee of Mrs. Mabry's absence, and I am just acting as the attorney in the case.

I prefer not to do it. Mrs. Tillman from the Council for Community Services in Metropolitan Chicago will be a witness today. Thank you.

CHAIRMAN MOORE: Thank you. Director Trainor? Do you want to proceed on what you think the solution to the decision of Mandley vs. Trainor should be and your rationale behind it?

DIRECTOR TRAINOR: Yes, sir. We basically have several objectives. One is to eliminate the emergency assistance program, which is optional under the law and the regulation, or to attempt to completely State fund the program, but given the Mandley decision, we would be creating in effect nothing more than a legal challenge in the State court on the same basis.

We could attempt to redefine the program within the Mandley decision. However, again, my friends and colleagues to my right would again file a suit on the question.

Rather than doing that, I think that the Court gave us some guidance, such as it is. The options that I would choose to exercise at this point is to follow the Court mandate, and that is to suspend the present program and seek to obtain from HEW a definition of an emergency assistance program.

Pending that definition and so that people would not in fact be destitute and, essentially, homeless or burn out cases, we would create a new program under AFDC and recognize a special need covering essentially the same items that we now cover under what the Court says is an invalid emergency assistance program.

CHAIRMAN MOORE: How would burnouts be handled?

DIRECTOR TRAINOR: They would be handled essentially in the same way they are now. If a person comes to an office and demonstrates a need for such type of assistance, they would be able to obtain it. Only rather than under an emergency assistance program under the special needs category AFDC program.

CHAIRMAN MOORE: In other words, it would not be under 606(e), but would be under 602 and 603?

DIRECTOR TRAINOR: That's correct.

CHAIRMAN MOORE: My main concern, I will be very honest with you, are burnouts, catastrophe losses, stolen warrants.

What would be the situation with the stolen warrants?

DIRECTOR TRAINOR: Well, let's take it – stolen warrants, at this point we already are under a mandate in the *Randall vs.* – I don't know if it was *Edelman, Swank* or myself.

(Discussion off the record.)

DIRECTOR TRAINOR: They have changed it. It is now *Randall vs. Trainor.*

CHAIRMAN MOORE: They got it right now.

DIRECTOR TRAINOR: Well, you know, they update these things.

But under that, we are mandated to replace lost or stolen warrants within a certain percentage of time, and the Department's record for the month of October was that within three days from the time the person reported the lost or stolen warrant, we had replaced 85.9 percent of those. Within four to seven days we replaced another 13.3 percent, so the Department right now is replacing within seven days 99.2 percent of lost or stolen warrants.

CHAIRMAN MOORE: Very good.

DIRECTOR TRAINOR: Now, in terms of the catastrophic situation, at any time under HEW regulations, we can recreate an emergency assistance program. Pennsylvania during the floods in fact did that. They had no emergency assistance program. They went ahead and created one, so if we had a tornado or some other catastrophe, or a wreck or something like that, we could in fact create an emergency assistance program.

CHAIRMAN MOORE: Senator Dougherty?

SENATOR DOUGHERTY: I was just going to ask the Director, in view of this decision then, you feel you have an adequate method of dealing with this? You are right under the gun, as I read the decision.

DIRECTOR TRAINOR: Yes, sir, I think the Judge expects me to do something one of these days.

SENATOR DOUGHERTY: But it can be done. I would suggest there is nothing else we could do in view of this situation. Have you outlined any plans that you might want to suggest?

DIRECTOR TRAINOR: Well, I think the Court correctly recognized that the problem with this program is a lack of definition.

SENATOR DOUGHERTY: We need a Dr. Hayikawa, in other words.

DIRECTOR TRAINOR: In effect, but we do need a definite, well thought out, vital emergency assistance program and what that should include, and the Court did say that the Department should seek to do that.

SENATOR DOUGHERTY: You have no objection?

DIRECTOR TRAINOR: No, sir. As a matter of fact, I intend to do that.

CHAIRMAN MOORE: Do I understand the recommendation, Director, is that your emergency burnouts would be funded under Section 602 and 603, is that correct?

DIRECTOR TRAINOR: Yes, sir.

CHAIRMAN MOORE: And you temporarily would suspend then Section 606(e)?

DIRECTOR TRAINOR: Yes, sir.

CHAIRMAN MOORE: What other items are covered besides burnouts that the Court declared unconstitutional?

DIRECTOR TRAINOR: Well, we cover essentially four items – homelessness, where the family is without shelter as a result of damage to the building, rendering it uninhabitable; court ordered eviction, where the court order occurs for reasons other than the recipient's failure to pay rent; potentially homeless, where the family is potentially homeless through damage to a portion of the building or of its contents, and the applicant in need of initial eligibility, where a client is determined eligible or presumed eligible to receive cash for clothing, household furnishings and equipment. Those are the four items that are covered.

CHARIMAN MOORE: And now we would restrict that to –

DIRECTOR TRAINOR: – The same four items would be covered under a new program under 602 and 603.

CHAIRMAN MOORE: Are there any other items that would be available – 602(e), that pertained only to AFDC, to recipients or eligible recipents?

DIRECTOR TRAINOR: Well, that is the problem. That is what the Court ruled that we could no longer do.

CHAIRMAN MOORE: We have to open it up to everybody?

DIRECTOR TRAINOR: We opened it up. I think this is the case where the advocates won more than they could really hope to achieve.

CHAIRMAN MOORE: Director, would you have any objection, on the recommendation of this Committee, to going with this thing for maybe a four or five month period and reporting back to us?

I do have some concern as far as the effect of the decision. In fact, it is sort of unfortunate the decision was ever granted in view of the posture we may be in. Would you report back to the Committee at its April meeting as to how the new system is going?

I am sure we will hear from the welfare community if it is not going well.

In addition to seeking clarification from HEW, which was suggested to you in the opinion of the U. S. Circuit Court of Appeals, also to investigate and study perhaps the totally State funding of this matter. We would be eligible under 602 and 603 for 50/50 match. If we go from $500,000 to $2 million, it is going to cost the State of Illinois $1 million and the Federal $1 million. It might be easier for us to take the whole program over in the State, which would cost $800,000, for example. In other words, there might be a potential cost savings if it were through an ADC situation, and also the possibility of investigating the feasibility of creating a special catastrophic occurrence as a special need, or an exception to the flat grant program.

Would you have any objection to that?

DIRECTOR TRAINOR: No, sir.

CHAIRMAN MOORE: Any questions of the Committee?

REPRESENTATIVE CATANIA: Mr. Chairman:

CHAIRMAN MOORE: Representative Catania:

REPRESENTATIVE CATANIA: Thank you, Mr. Chairman. Director Trainor, when you mentioned the length of time it took to replace a check when it was stolen, by "replace", do you mean those checks were then actually in the hands of the people who had reported the loss?

DIRECTOR TRAINOR: Yes, ma'am, that is what I do mean.

REPRESENTATIVE CATANIA: How soon do you expect to be able to have a plan working that should satisfy the Court?

DIRECTOR TRAINOR: That depends on the definition that they give to emergency assistance. The Court, rather than defining what an emergency assistance program was, rather cleverly said that was not their duty, that it is up to the Department and HEW, so that now we have to seek HEW guidance on what is an emergency assistance program.

REPRESENTATIVE CATANIA: I assume you have already sought that guidance?

DIRECTOR TRAINOR: No, ma'am, I have been waiting the outcome of this meeting.

CHAIRMAN MOORE: I might add, Representative Catania, that the Director, as of about seven or eight days ago, was coming close to being held in contempt of court. I did give him a letter which was apparently helpful, inasmuch as he is mandated to bring this before this Committee, and the earliest time we could have had a meeting was today, so apparently that letter was forwarded to the Judge and you are awaiting some advice from the Committee today?

DIRECTOR TRAINOR: I am awaiting your advice and of counsel, yes, sir.

CHAIRMAN MOORE: I do have a memo from Representative Mann expressing his opinion, and for the record I would like to state that he thinks:

> "The Department should not withdraw from Federally funded emergency assistance, and that the Department should comply with the Court of Appeals decision and have a full program."

That message was given to me over the telephone. It came in over the telephone. I would like the record to so reflect.

Are there any other questions? Representative Campbell:

REPRESENTATIVE CAMPBELL: Mr. Chairman, for purposes of a motion, I move that the Legislative Advisory Committee on Public Aid approve for a five month period the plan as recommended by Director Trainor to handle emergency burnouts, to be funded under Sections 602 and 603, and to report back to the Committee at its April, 1976 meeting with the results of this program and his recommendation to handle other special emergency needs which may not have been met, and that Director Trainor request from HEW clarification of his emergency assistance program as suggested by the U. S. Court of Appeals, and that Director Trainor investigate and study a purely State program to define and meet emergency needs, and that Director Trainor investigate and study the feasibility of creating a special catastrophic occurrence as a special need under the flat grant program.

CHAIRMAN MOORE: You have heard the motion. Is there a second?

REPRESENTATIVE FLINN: Second.

CHAIRMAN MOORE: Seconded by Representative Flinn. On that question the Secretary will take the roll.

MS. CHESNUT: Representative Campbell:

REPRESENTATIVE CAMPBELL: Aye.

MS. CHESNUT: Representative Catania:

REPRESENTATIVE CATANIA: Aye.

MS. CHESNUT: Representative Davis:

(No response)

Senator Dougherty:

SENATOR DOUGHERTY: Aye.

MS. CHESNUT: Representative Flinn:

REPRESENTATIVE FLINN: Aye.

MS. CHESNUT: Representative Kempiners:

REPRESENTATIVE KEMPINERS: Aye.

MS. CHESNUT: Senator Lane:

(No response)

Representative Mann:

(No response)

Senator Moore:

SENATOR MOORE: Aye:

MS. CHESNUT: Senator Ozinga:

(No response)

Senator Schaffer:

SENATOR SCHAFFER: Aye.

MS. CHESNUT: Senator Smith:

SENATOR SMITH: Mr. Chairman:

CHAIRMAN MOORE: Senator Smith:

SENATOR SMITH: Realizing the deep need to define and review so we can come up and comply with the rules of HEW, I still can't overlook the fact that until the time specified in my friend's amendment that was passed or lapsed, and that there will be a problem after the Director will have contacted HEW with time for him to draft such acceptable legislation and leaving these people in limbo, as I think they are now, I am recalling as I talk the fact that we have set up welfare stations throughout the State in convenient places, so that rather than contact us here in Springfield in emergencies such as we have discussed here on the four matters that are involved, that they will apparently be no better prepared and perhaps not as well prepared to receive some emergency assistance. There is no way under high heaven they could be. Therefore, I must vote nay.

CHAIRMAN MOORE: All right, gentlemen, on this question there are seven "ayes", one "nay", and the motion carries.

Mrs. Tillman, I inquired before whether or not anyone desired to speak. Then there was a conference back there and –

MRS. TILLMAN: Well, the problem was, I was not speaking for the Welfare Rights Organization. I was going to speak for the Council of Community Services, so we got caught in the shuffle.

CHAIRMAN MOORE: It was not the intention of the Chair to prevent you from testifying, if you so desired. Do you want to say a few words, or –

MRS. TILLMAN: I think it is a little past the point, I think, in terms of what I have to say.

CHAIRMAN MOORE: I think the Committee does have some concern and some reservations, as you will note from the other directions that were given to the Director on this point.

This matter will be back on our agenda at the April meeting, and I assume that the good judges of the U. S. Court of Appeals will continue the case again until after that meeting, Director, but I think that the Committee – there is a problem. It is just unfortunate the decision came down in the first place.

SENATOR SMITH: Mr. Chairman:

CHAIRMAN MOORE: Senator Smith:

SENATOR SMITH: May I ask a question of you or of the Director, either or both?

When you were speaking of that decision you brought something back to my mind, a communication that we received from the Director demanding, in the light of the Court's ruling, that an answer be had by, I think, December – no, by the 7th or something.

CHAIRMAN MOORE: November, I think.

SENATOR SMITH: I am informed the 7th of September.

Now, have you answered the Court or has anyone, to your knowledge? I am trying to determine whether the Court has finalized –

CHAIRMAN MOORE: If I could reply, Senator Smith: Because this Committee could not have a meeting prior to November 7th, I delivered to the Director a letter stating that this would be the earliest time the Committee could have a meeting under Chapter 23, Section 1214, which it was required to do, and he in turn used this letter, I believe, with the Court of Appeals to stall them pending our decision today, so that he could then go ahead and then implement the order.

SENATOR SMITH: May I then ask a question of the Director.

Did you deliver such a letter?

DIRECTOR TRAINOR: I gave it to the attorneys handling the case. The use they have made of it I don't know, but as far as I know, I am not in contempt of court right as of this moment.

CHAIRMAN MOORE: All right, we will proceed.

Director, Item V, a progress report on follow-up of problems of delayed payments by the Department to Cook County, Oak Forest Hospitals, and the investigation on the Von Solbrig and Northeast Community Hospitals.

Mrs. Gossage, are you under any special time period?

MRS. GOSSAGE: I should be out of here before 4:00.

CHAIRMAN MOORE: All right, Director, go ahead.

DIRECTOR TRAINOR: First of all, I am sorry Senator Ozinga is not here because I did check on the sixth-month problem. We did have a problem, but it is nowhere near as severe as Dr. Houghton and Mr. Jarvis attempted to paint it.

In the last eight months there have been ten records that took 45 days or more, so that I don't think that is a generic problem, although we have issued instructions to regional directors and the

[End of Exhibit.]

* * *

[Affidavit of Service omitted in printing.]

* * *

[Affidavit of Service omitted in printing.]

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption omitted in printing.]

DEFENDANTS' OBJECTIONS TO THE ENTRY OF PLAINTIFFS' PROPOSED ORDER

Plaintiffs herein have offered this Court a proposed order allegedly intended to implement the previous orders and opinions of this Court. This Court rendered its decision in Defendants' Motion to Dismiss on December 31, 1975. Defendants were given to and including January 21st to make their objections to that order.

Prior to the Court's decision Plaintiffs filed an appeal to the United States Court of Appeals for the Seventh Circuit seeking reversal of this Court's Order denying Plaintiff's Motion for an Entry of Final Judgment and Decree, which order was entered on the 1st of December, 1975. The appropriateness of an appeal from the denial of an entry of an order while at the same time urging its entry in the court below is a question of jurisdiction on which this Court should be briefed by the parties. However, due to the brevity of time that Defendant's Counsel has been afforded, that issue cannot be adequately briefed herein. Only the objections to the order will be set forth.

OBJECTION TO PROPOSED FINAL JUDGMENT

1. The proposed order totally ignores the fact that the Defendant ILLINOIS DEPARTMENT OF PUBLIC AID has ceased maintaining its § 406(e) Emergency Assistance program. In fact, Plaintiffs' proposed order sug-

gests that the program is continuing and in their proposed order seeks to mandate the resurrection of a program which has long since ceased.

This Court's Order of December 31, 1975 recognizes that, since November 24, 1975, the Illinois Department of Public Aid has not been operating a program pursuant to § 406(e) of the Social Security Act. Paragraph 14 of the proposed order evidences plaintiffs' erroneous contention that the Defendants must resurrect this program:

> "The State Defendants have violated *and continue to* violate § 406(e) of the Act. . . ."
>
> Paragraph 14 of Plaintiffs' Proposed Order
> (Emphasis added.)

This assertion is directly contrary to the finding of the Court of Appeals in the instant case that the Illinois Department of Public Aid has the right to discontinue, as it already has, its § 406(e) program at any time.

> "Illinois, *should it elect* to continue to provide an Emergency Assistance program in the future, will still have substantial control of its program. . . .
>
> Seventh Circuit Court of Appeals Decision
> (September 25th, 1975) at page 11.
> (Emphasis added.)

The Court of Appeals cited, at page 13 of its Decision, *Purnell* v. *Edelman*, ——F. 2d—— (7th Cir. Nos. 74-1051 and 1052, decided April 10th, 1974.). That case presented a problem to the Trial Court on remand identical to the instant situation. In *Purnell*, the Illinois Department of Public Aid chose to cease its participation in the same 406(e) Emergency Assistance program for utility service "turnons" and instead adopted a different mode of handling the problem which did not use § 406(e) funds. Plaintiffs, on remand to the Court below, sought a Rule to Show Cause why the Defendants should not be held in contempt of court. Upon being satisfied that the State was no longer claiming funds under the 406(e) Emergency Assistance program, plaintiffs withdrew their motion for a rule. In that case withdrawal from the 406(e) program was sufficient to moot the controversy. This Court should likewise recognize the Defendant's option to withdraw from the Federal Emergency Assistance program and should recognize that the IDPA, in fact, has chosen that alternative.

The conclusions of law proposed in paragraphs 9, 10, 11, 12, 13 and 14 are thus erroneous insofar as the State of Illinois has ceased participating in the 406(e) program.

2. The proposed order erroneously seeks to interfere with the Defendants' decision to operate special needs program for burnouts and other specified conditions.

The Plaintiffs' Complaint does not include any allegations regarding the IDPA's ability to maintain any specific programs under § 402 and § 403 of the Social Security Act. This Court has heard no argument on such points. Yet the Plaintiffs seek to have this Court determine relationships between these various Act sections (paragraph 11 of the Proposed Order) and declare violations of § 402 (paragraph No. 12 of the Proposed Order). Such "conclusions" are not only based upon matters not properly brought before this Court, but also are immaterial to the action.

The action was brought in relation to the IDPA's § 406(e) program. Such program does not now exist. To effect other actions, a new action (or at the least an amended complaint) would be necessary. Plaintiffs have chosen, and declared their intention, not to amend their Complaint.

3. The paragraphs in the "Ordered and Decreed" portion of the draft order are each unacceptable as they are based upon improper legal conclusions.

Paragraph A is based upon the assumption that a 406(e) program is still being maintained. This assumption is false and misleading.

Subparagraph 1, 2, 4 and 5 thereof seek to order the IDPA to create a new § 406(e) program. Such an order would be contrary to the Court of Appeals' clear statement the State may choose not to operate a 406(e) program.

Paragraph B of the proposed order seeks to order HEW to change its ruling and procedures on § 406(e). As there is currently no 406(e) program in Illinois, any consideration of such an order would be erroneous, as there exists no case or controversy, at least until IDPA should later decide to recreate a § 406(e) program, should it so choose.

Paragraphs C and D of the proposed order seek to mandate the granting of "emergency assistance" by IDPA. To the extent that this paragraph relates to a § 406(e) program, it is improper for the reasons stated above. If this paragraph is not based on § 406(e) but is based on an alleged state law requirement, it is inappropriate insofar as this Court declined pendent jurisdiction over state law questions.

Paragraph F of the Proposed Judgment Order seeks to bind Defendants' attorneys. Defendants' attorneys are Special Assistant Attorneys General, and as such are constitutional officers of the State of Illinois. Therefore, this portion of Paragraph F is completely inappropriate and must be stricken.

Defendants do not object to the entry of Paragraph G, and respectfully state that such an order, stating the Court's continuing jurisdiction, is the sole order necessary and proper to effectuate the Court's December 31st 1975 ruling in the present situation. Should the situation change, this Court may enter such orders in the future as are appropriate.

The Court of Appeals has ruled upon the IDPA's program as it existed prior to November 24, 1975. The Defendants have no intention of acting irresponsibly or in bad faith and will not reinstate a § 406(e) program prior to the next status call within prior notice to the Court.

This Court may wish to consider the entry of an Order, a portion of which declares that said Order is only binding upon state officials insofar as they claim funds under 42 USC § 406(e). However, it is the Defendants' contention that the Court need only maintain continuing jurisdiction of the matter at this time. Clearly, as long as the State of Illinois does not claim monies under this section of Title 42, any order which directs them to resurrect and maintain such a program is contrary to the law of this case.

Respectfully submitted,

/s/ WILLIAM J. SCOTT

WILLIAM J. SCOTT
Attorney General of Illinois

GEORGE L. GRUMLEY
Special Assistant
Attorney General
(Of Counsel)
100 North LaSalle Street
Suite 1600
Chicago, Illinois 60602
341-4693

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption omitted in printing.]

FEDERAL DEFENDANT'S OBJECTIONS TO PLAINTIFF'S PROPOSED FINAL JUDGMENT

As a preliminary matter, the federal defendant objects to the entry of any further orders or decrees in this matter, other than an order dismissing this cause as moot. It is uncontested that the Illinois Department of Public Aid is no longer requesting reimbursement from the Department of Health, Education and Welfare for funds expended under Section 406(e) of the Act, 42 U.S.C. § 606(e). The matter is moot.

Objections to Proposed Findings and Conclusions

Besides the fact that this cause is moot and that the cause has not been remanded by the Court of Appeals for further action, the federal defendant's main objection to the plaintiffs' proposed final judgment is that it asks this Court to rule on issues that were never presented to it and on which it has heard no evidence. This point is obvious from a consideration of paragraphs 11 and 13 of the plaintiffs' proposed conclusions of law. Those paragraphs read:

> 11. Congress, in §§ 406(e) and 403(a)(5) of the Act, has determined the terms of eligibility and funding for an emergency assistance program. *The state defendants' effort to avoid the eligibility standards of § 406(e) by claiming funding for emergency assistance*

> *from funds available for AFDC or for any other federally funded program is contrary to the clear intent of the Act and a violation of § 406(e)(1).*
>
> * * *
>
> 13. *Defendant H.E.W., furthermore, may not approve or fund a state's emergency assistance program, whether designated as a "special need" or otherwise, except as authorized by § 406(e).* (Emphasis added.)

By insinuating these paragraphs into their proposed final order, plaintiffs are asking this Court to define the permissible scope of the Aid to Families with Dependent Children (AFDC) program, 42 U.S.C. § 606(b), by ruling that certain types of aid are not included in that program. Such a ruling on the AFDC program is totally inappropriate for several reasons. The complaint, as amended, does not challenge the AFDC program. Additionally, the plaintiffs are asking this Court to rule on the validity of a program under AFDC that is not in existence and that has not even been submitted for approval to the Department of Health, Education and Welfare. Thus, there is no controversy before this Court concerning any new Illinois AFDC program; and there may never be. Yet, plaintiffs seek to have this Court enjoin the Department of Health, Education and Welfare's approval and funding of programs that have not been submitted for approval.

Objections to the Proposed Decree

The introductory part of paragraph A of the proposed decree suffers from the same deficiencies as the proposed conclusions of law. The question of whether a regular state AFDC program can provide assistance if, for example, a burnout occurs, has not been put in issue in the pleadings and no concrete factual situation has been presented to the Court.

The numbered subparagraphs of paragraph A seek to have this Court, in effect, order the State to adopt an emergency assistance program. There is no legal basis for requiring the State to adopt such a program.

Paragraph B of plaintiffs' proposed decree is also improper. In that paragraph, plaintiffs seek an injunction against possible, vaguely defined future action of the Department of Health, Education and Welfare. The use of the drastic remedy of permanent injunction is not necessary. This Court, if it enters an order other than an order for dismissal, will presumably declare the now defunct Illinois emergency assistance program to be invalid. If such an order is entered and becomes effective, the Department of Health, Education and Welfare will comply with it. Plaintiffs seek far more than compliance with the Court of Appeals determination that the Illinois emergency assistance program was invalid. Plaintiffs seek a purely advisory ruling and injunction that any state program under any section of the Social Security Act that provides what plaintiffs term "emergency assistance" is invalid.

In subparagraph 1 of paragraph B, plaintiffs seek to have this Court order the Secretary of the Department of Health, Education and Welfare to promulgate new regulations. This Court has no authority to order the performance of a discretionary act, such as the adoption of any particular regulation.

Conclusion

The federal defendant has applied to the Court of Appeals for the Seventh Circuit for an order recalling its mandate and vacating its prior order for mootness. If the Court of Appeals grants our petition, this Court need not act. If that petition is denied, the federal defendant is likely to petition for a writ of certiorari to have the Supreme Court declare this cause to be moot. We suggest that this Court withhold action pending ruling by the appellate tribunals.

Respectfully submitted,

/s/ SAMUEL K. SKINNER

SAMUEL K. SKINNER
United States Attorney

[Affidavit of service omitted in printing.]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable Thomas R. McMillen

July 12, 1976

73 C2453

Mandley v. Trainor

Defendant's motion to dismiss for mootness is granted, and this cause is dismissed for lack of case or controversy.

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption omitted in printing.]

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the HONORABLE THOMAS R. McMILLEN, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Monday, July 12, 1976, at the hour of 10:00 o'clock a.m.

* * *

THE CLERK: 73 C 2543, MANDLEY vs. TRAINOR; status report.

MR. LEFKOW: May it please the Court, we are here today for a hearing that your Honor offered the plaintiffs on whether or not to amend the complaint. Your Honor will recall we were before you last Friday. We filed a memorandum of law. There was colloquy between the Court and counsel on certain various points.

I only have three basic points to make today, and part of them to respond to some inquiries your Honor made on Friday.

THE COURT: Let me say that I have got a number of shorter matters. I will pass this to the end of the 10:30 call.

> (Whereupon the Court gave its attention to other matters on its calendar, after which the following further proceedings were had herein:)

THE CLERK: 73 C 2453, MANDLEY vs. TRAINOR.

MR. LEFKOW: Good morning, your Honor. Michael Lefkow on behalf of the plaintiffs.

MR. GRUMLEY: George Grumley on behalf of the State defendants.

MR. FILPI: Robert Filpi for the Secretary of Education and Welfare.

THE COURT: Good morning.

MR. LEFKOW: Your Honor, when you called the case earlier, I started to say I had several brief comments I wanted to make.

The first was on the point of whether the complaint should be amended. It would be to offer to the Court a copy of our amended complaint we filed. I think early in 1973 –

THE COURT: I have it. You can have this back because I have the record here. I have looked at it.

MR. LEFKOW: Thank you.

THE COURT: That is the problem. I don't see how you raise these issues that you talk about in this last filing that you made the other day.

MR. LEFKOW: Well, your Honor, when the case was litigated, it was litigated on the whole complaint. You suggested on Friday it was litigated only on Section 406(e) but an examination of the complaint would reveal that many other sections are cited as being violated: Section 402, Section 403(a)(5).

For example –

THE COURT: Well, you cite them, yes. As a matter of fact, I was a little curious as to why you went on 406, but that is what it was litigated on and that is what it went to the Court of Appeals on.

Now the things that you raise are completely ancillary to the amended complaint that you filed on December 20, 1973.

MR. LEFKOW: Well, your Honor, I cannot really agree with that point, because we asked for a declaratory judgment; that the program the department was maintaining for emergency assistance violated both State and Federal law. We didn't limit it just to 406(e) and there was never any intent. I don't believe that a reading of the Court of Appeals would reflect it.

The second point is that Mr. Grumley said Friday they are claiming Federal funds or they could claim Federal funds as a special need apparently under the AFDC program. Mr. Grumley's statement is somewhat incoherent; it is difficult to tell just what he meant.

But that is in direct conflict with Mr. Filpi's statement on Tuesday of last week when he categorically denied that the Federal government was paying any funds for emergency assistance to the State defendants.

So, it is a question of what are the facts. We don't even know what the facts are before the Court. I don't know the facts, Mr. Grumley doesn't know the full facts.

MR. GRUMLEY: That is not true, your Honor.

MR. LEFKOW: Mr. Filpi doesn't know the full facts, and his statements are nothing but unsworn assertions of counsel.

I don't want to reargue the point on asking for Mr. Trainor's deposition, but if the Court is going to make a final disposition of this case, I think it ought to fully and fairly have all the facts before it, and not just statements of counsel.

THE COURT: Well, the only final disposition I was prepared to make, and I still am, is that the issue under 406 and the issue that was tried in this case and the issue that went to the Court of Appeals is no longer an issue. There is no longer any case or controversy on it.

Now you filed a document on July 6th in which you raised some ancillary matters in which you believe that the State is going around through the back door attempting to avoid the requirements of 406 and 402, and in various other ways trying to put in this program in a different way than was litigated, but that is not in your complaint.

What I have been saying all along, Mr. Lefkow, is if you want to raise those issues, plead them. Then if you want to take Mr. Trainor's deposition and find out if he is violating his duty by taking government money under false pretenses, we will go into that.

MR. LEFKOW: Well, your Honor, I believe that there is a presumption that everything is tried that is in the complaint, and nothing less than the full complaint is tried unless the Court expressly limits the issues at trial. There was no express limitation of this issue.

I wonder, your Honor, why we spent, why this Court spent three years and I as an attorney for the plaintiffs spent three years litigating an issue, and then they try to pull the rug out from underneath everybody and say we have a different program. Why didn't they say that first? Why did they hire one of the top law firms in the City of Chicago and State of Illinois and probably spent as much in fees as they were spending on emergency assistance? What have we been doing here for three years if they can do a maneuver like this? That is what I think it is, your Honor.

The Court can treat it as an equitable matter and say this is unconscionable. Your Honor said, I remember, in December, "I don't think what the defendants are doing is commendable, and I will rule on the merits."

THE COURT: On the merits of what?

MR. LEFKOW: That was on their motion to dismiss, and your Honor denied their motion to dismiss.

We pled in our answers to their motion to dismiss this fund-searching scheme.

Mr. Filpi took it up or other associates took it up to the Court of Appeals to try to get the Court of Appeals' decision vacated and get an order directing your Honor to dismiss the complaint. The Court of Appeals, your Honor, refused to do that.

Now, I think that that says the Court of Appeals is putting a stamp of validity upon this complaint. It did in its opinion and it did in its refusal to vacate its opinion.

THE COURT: You know as well as I do what the Court of Appeals said about Section 406, and that is exactly what happened. The State abandoned it.

MR. LEFKOW: Well, did they abandon it, your Honor?

THE COURT: Yes, they did.

MR. LEFKOW: Well, how do we know that? Mr. Grumley six months –

MR. GRUMLEY: I know what I said.

THE COURT: I don't know whether you know it or not, but I know it. That is why I say I was prepared to rule that the complaint is moot.

Now, if you want to file an amended complaint, if you want to accuse the State, which you have a right to do, doing this under some kind of fraudulent or dishonest or overt action in another program, in my opinion you should file an amended complaint. That is what I asked you to do today if you wanted to do it.

I don't think you have alleged it in your amended complaint that we tried. As far as I am concerned, that complaint is dead.

MR. LEFKOW: Well, your Honor, we alleged, I remember specifically, in Paragraph 42 that the Department of Health, Education and Welfare was funding a program for the State of Illinois for emergency assistance that violated Federal and State law, and we cited the law. It was not just limited to Section 406(e). I remember when I was before you on Monday, you said, "You only asked for relief under Section 406, didn't you, Mr. Lefkow?" I said, "No, your Honor."

I didn't say it in so many words. I said, "No, your Honor." Again, I say no, we didn't ask for relief under 406(e).

We asked for relief for violations of Federal and State law under the whole Social Security Act, whatever is applicable, which would be Sections 402, 403(a)(5) and 406(e).

So, I thought I answered your Honor's point on this. I don't see how we can have a much broader complaint in this case. It pleads a notice pleading. In a case like this, they know what they are doing and they know what type of subterfuge it is. They haven't denied that they are claiming Federal funds. It should be watched if they are claiming Federal funds.

Was your Honor able to find the specific paragraph?

THE COURT: Oh, yes. I read your amended complaint immediately after you said you thought that it covered this new situation that has developed in the last six months. I have it right here. I just don't think that the amended complaint covered it.

You cite a half dozen sections of the statute and a half dozen regulations, but that isn't what you litigated and you know you didn't litigate it.

MR. LEFKOW: Well, your Honor, I must disagree with that. I believe that everything that is in the complaint is litigated.

THE COURT: You litigated the program that was under Section 406.

MR. LEFKOW: Well, your Honor, 406 just defines what emergency assistance is.

THE COURT: That is right. You went under a definition section.

MR. LEFKOW: Yes, your Honor, but at the top of the definition section, it says "when used in this part" and the part it refers to, your Honor, is Section 402(a) of the Social Security Act.

Now, Section 402(a) commences with Section 401, which is an appropriation authorization and the public purposes.

Section 402 says that a State plan for aid and services to needy families with children must meet the following requirements, about 28 of them.

THE COURT: That is right.

MR. LEFKOW: So, now, what we have said in our complaint, your Honor, is that when they give emergency assistance out, and it is defined in the Federal regulation, it must be given out pursuant to plan under Section 402. That plan under 402(b) must be approved by the Secretary of the Department of Health, Education and Welfare.

Now, when the Secretary has approved that plan, then the Secretary of the Treasury may, pursuant to Section 403(a)(5), which is the appropriation statute, pay from the Treasury of the United States to the Illinois Department of Public Aid or the State of Illinois Federal funds for the purposes of emergency assistance. That, your Honor, is the statutory scheme, and that is what we alleged in the complaint, and we believe that that was what was tried by this Court and reviewed by the Court of Appeals.

We believe the Court of Appeals said if they are claiming Federal funds for emergency assistance purposes, they cannot maintain a discriminatory regime where they give emergency assistance to some needy families but they don't give it to other needy families.

Now, the situation as far as I know, your Honor, hasn't changed. Many needy families are still not receiving emergency assistance.

Mr. Grumley stated on Friday that they have a different program than the one that was litigated in this case. Your Honor, I haven't seen it. I have never seen a notice of filing that shows that they showed it to this Court. I think he should show it to this Court and he should show it to the plaintiffs and to HEW. I think we should get the full facts out here, Judge.

THE COURT: As I said before, Mr. Lefkow, if you want to file a complaint that goes into their present program, you are going to have to amend, or if you want to accuse them of some deviousness, taking money for emergency relief that they are not supposed to, you are going to have to amend.

Now, let's hear what Mr. Grumley has to say, because I asked you specifically if you wanted to file an amended complaint today, and I haven't heard any answer, but I haven't seen an amended complaint.

MR. GRUMLEY: Your Honor, briefly, I suggest that the Court reconsider the motion to dismiss for mootness that the State and Federal defendants made some months ago. In light of recent filings, I think it is appropriate as the Court noted to grant that motion now.

Secondly, in response to Mr. Lefkow, I am looking at the decision of the Court of Appeals, namely, on page 11 which notes briefly, and I am quoting, "Illinois, should it elect to continue to provide an emergency assistance program in the future, must have substantial control over that program."

That intends to me, and it did to my clients, that as the law provides, it is an elective program.

But further, all throughout the opinion of the Court of Appeals, it notes on page 1 and goes on that plaintiffs alleged department revised program for emergency assistance to AFDC recipients filed under Section 406(e) of the Social Security Act – on through every page of the complaint, that is the only statutory provision that the Court of Appeals referred to.

I think it is clear that we did litigate the program under Section 406, and that nothing else was before the Court other than that.

I have nothing further to say.

THE COURT: Well, it was my understanding of what was litigated.

Do you want to file an amended complaint and raise these other issues? I am perfectly willing to review whatever emergency aid program the State has if they are using Federal funds.

I am not going to review it on this complaint.

MR. LEFKOW: Your Honor, I believe that the status of the pleadings is sufficient for the Court to enter a final and just order enforcing the mandate of the Court of Appeals. We believe that the facts should be more fully brought out through Mr. Trainor's deposition. We outlined these matters, what they were doing, for the Court back in November. We pled them in our answer to their motions to dismiss which were denied by this Court and denied by the Court of Appeals.

We don't believe that we could plead the matters any further than we have pled them, your Honor, or try them any further, because we believe they have been fully tried, and that this Court should really put its foot down and stop what the defendants are doing to circumvent the Court of Appeals' decision and the decision of this Court.

We must respectfully decline the Court's invitation to amend the complaint. We do urge the Court to reconsider allowing us to take Mr. Trainor's deposition. Thereafter, after we have had a chance to do that, to enter the final order that we suggested to the Court back in November of 1975.

THE COURT: That is the final order with respect to the 406 program, isn't it?

MR. LEFKOW: No, your Honor. Our proposed and final order covers the program which is basically – it must be filed under 402, your Honor. It must meet all the eligibility requirements of Section 406(e).

THE COURT: I don't think I have that particular document here.

MR. GRUMLEY: It was filed several times, your Honor.

MR. LEFKOW: It was filed November 26, your Honor. In a way, your Honor, this is the same situation that was before the Supreme Court in the Townsend case which I mentioned previously.

THE COURT: Which one? Which case?

MR. LEFKOW: The Townsend case, your Honor.

THE COURT: Oh.

MR. LEFKOW: It involved interpretation of the definitional section, 606(a), as to children between 18 and 21 who were attending colleges or vocation schools and whether the State had to give money to children in college. At the time they were only giving it to children in vocation schools.

The United States Supreme Court interpreted the definitional section and said that that section requires the Department of Public Aid through Section 402(a)(10), which is the duty to furnish assistance with reasonable promptness – in this case, it is the duty to furnish assistance forthwith. Those two sections combined placed a mandatory duty upon the defendants to provide this assistance unless Congress had clearly indicated on the face of the statute or in the legislative history a contrary desire.

The Court of Appeals, of course, in this case said that Congress had not indicated on the statute or in the history a contrary desire other than there be no discrimination among these needy families, your Honor.

So, that same reasoning, your Honor, applies to the situation we have before us here.

We believe we are in accord and conformity with the approach the Supreme Court of the United States has taken to welfare litigation. We believe that the Court of Appeals also has adopted that same approach in this particular case. To amend the complaint further, we believe, could not accomplish anything. The children will still suffer in the meantime with the long delays, long expenses.

I must say to the Court that the litigation in this case has to me been a great personal burden. It has been a great burden to the plaintiffs to represent a class of needy children who have been deprived of effective emergency relief for a period of three years. The complaint as amended, if no relief is granted, it could go on, your Honor, for another several years. We believe that that heavy, heavy burden that rests upon us requires us to decline to amend the complaint.

THE COURT: Well, that is why it baffles me, Mr. Lefkow, that you would rather avoid what I think you should do and find yourself back up in the Court of Appeals with another two-year delay. I mean, it isn't going to expedite the matter at all for you to take the position you are, because as Mr. Grumley has said more than once, he would like to litigate this in the Court of Appeals. That does nothing except delay the ultimate relief that you and your clients apparently believe they are entitled to. It could be very simply remedied if you do what I have suggested to you several times. You have declined to do it.

So, I am going to dismiss the complaint on the grounds of mootness and the lack of any case or controversy between the parties. That will be the order.

MR. FILPI: Thank you, your Honor.

MR. GRUMLEY: Thank you very much, your Honor.

(Which were all the proceedings had and taken on the day and date aforesaid in the above-entitled cause.)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 76-1865

VENUS MANDLEY, et al.,

Plaintiffs-appellants,

v.

JAMES L. TRAINOR, et al.,

Defendants-appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 73 C 2453—**Thomas R. McMillen,** *Judge.*

HEARD NOVEMBER 4, 1976—DECIDED
NOVEMBER 23, 1976

Before CUMMINGS and TONE, *Circuit Judges*, and CAMPBELL, *Senior District Judge.*[*]

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[*] Senior District Judge William J. Campbell of the Northern District of Illinois is sitting by designation.

CUMMINGS, *Circuit Judge*. This appeal is a sequel to the proceedings discussed in our earlier opinion reported in 523 F. 2d 415 (1975) (*Mandley I*). There we held that the Illinois Emergency Assistance Program for needy families with children defined eligibility more narrowly than Section 406(e)(1) of the Social Security Act (42 U.S.C. § 606(e)(1) and therefore violated the Act. Our mandate was returned to the district court on October 24, 1975.[1] On November 26, the plaintiffs submitted a proposed final judgment and decree disposing of the controversy. A few days thereafter the state defendants filed a motion to dismiss the cause of action on the ground that on November 21, 1975, Illinois had withdrawn from participation in the Emergency Assistance Program established under Section 406(e). They did not inform the Court that they intended to carry on virtually the same program[2] under a different name but still with the usual 50 per cent federal funding as part of their regular Aid to Families with Dependent Children (AFDC) Program. The record shows that this new plan was to avoid our September 25 decision and was conceived as early as November 17, 1975, and formally presented to HEW on April 23, 1976, but effective January 1, 1976. However, on November 18, the state defendants misled the Court by asserting that only state funding would be employed.

HISTORY OF EMERGENCY ASSISTANCE AFTER *MANDLEY I*

In order to understand how the state defendants have vacillated between affected compliance with *Mandley I* and a final blatant disregard of the congressional eligibility requirements enforced thereby, it is necessary to trace the history of emergency assistance in Illinois after that decision became final.

At the November 17, 1975, meeting of the Illinois Legislative Advisory Committee on Public Aid, defendant Trainor submitted the recommendation dated October 30, 1975, of his Department to "Eliminate [42 U.S.C.] 606(e) Program and Create a Program for Meeting Emergent Burnout Cases to be Funded Under Section 602 and Section 603." After consideration of the Department's proposal, the Committee endorsed the Department's recommendations and requested that the Department report back to the Committee "at its April 1976 meeting with the results of this program and [its] recommendations to handle other special emergency needs which may not have been met."

In its October 30 position paper, the Department indicated that "[e]liminat[ion] [of] the 606(e) Emergency Assistance Program" was out of the question:

---

[1] In December 1975, the Department of Health, Education and Welfare requested and received an extension of time in which to petition the Supreme Court for certiorari. However, no petition for certiorari was ever filed. In January 1976, the Department sought to have us recall our mandate on the ground of mootness but we denied its petition on January 30, 1976.

[2] In a letter dated March 9, 1976, from Director Trainor of the Illinois Department of Public Aid to the Legislative Advisory Committee on Public Aid, Trainor revealed:

> "the special needs program we substituted affords the virtually same benefits and employs the delivery system we were using prior to the Court's ruling that our program was not in accord with S406(e) of the Social Security Act. Thus, there has been no effect upon the recipients * * *."

> "The Department, although believing this [eliminating] alternative to be legally acceptable, finds this alternative totally unacceptable. The Department believes that certain Emergency conditions, such as homelessness through burn outs are needs which the Department of Public Aid clearly ought to meet and the Department would not wish to curtail its ability to do so."

"[O]fficial notification to the Department of Health, Education and Welfare that Illinois shall not request reimbursement pursuant to § 406(e) of the Social Security Act (42 U.S.C. § 606(e)) for any expenses incurred after November 21, 1975, as the Department is terminating its program for 'Emergency Assistance to Needy Families with Children' existing pursuant to said § 406(e)" was given by the Department of Public Aid in a November 21, 1975, letter to HEW.

On April 23, 1976, the state defendants submitted a plan to HEW (Joint Appendix 21-132—21-140) that was consistent with this notification of November 21. The April 23 plan, discussed *infra,* is the one now in effect.

On April 26, 1976, before another meeting of the Legislative Advisory Committee on Public Aid, Trainor indicated that the Department would assent to a broader emergency assistance program to alleviate destitution:

> "After July 1, 1976, the program would be on a six-month trial basis. It would broaden the emergency needs to include persons to whom destitution exists or to whom destitution is threatened, and remedy any cause of destitution" (Tr. at 40).

On May 3, 1976, in a report to the Court, defendants averred that the:

> "Department will in all probability choose to apply for funding pursuant to § 406(e) of the Social Security Act (42 U.S.C. § 606(e) *et seq.*), when it has completed designing such an emergency assistance program and will submit the necessary State plan amendments to the Department of Health, Education and Welfare."

In the same report, defendants stated they were not "presently claiming any funds under § 606(e)."

In a May 12 report to the Court, defendants submitted a proposed plan which laid out eligibility requirements at least colorably consistent with Section 406(e)(1). At a May 17, 1976, meeting of the Legislative Advisory Committee, Representative Mann indicated that the implementation date of the broadened plan would be advanced from July 1, 1976, to April 1, 1976.

On May 19, 1976, HEW filed its comments on the May 12 plan. Acknowledging that the new plan "differs radically from the old emergency assistance program," HEW noted:

> "It is the Secretary's understanding that the plan description is merely a report to the Court concerning the present state of the Director's thinking concerning a new Illinois emergency assistance program. *When and if, that thinking crystalizes and is embodied in a completed plan, that plan will be submitted to the Secretary for approval. Until that time, the Secretary can have no formal views on the acceptability of any plan that the Director may be considering.*" (Emphasis supplied.)

Because of the broadened eligibility requirements, the plaintiffs believed that the "objections to the earlier plan [they] intended to file on May 19, 1976 [might] be unnecessary either in whole or in part," although the plaintiffs reserved the right to file objections to the amended plan.

On June 14, the Legislative Advisory Committee approved a plan with the following eligibility requirements:

> "Recipients of AFDC, AABD, GA (in units administered by the Department) and persons who could be found presumptively eligible for such programs, including any needy child under 21 and the specified relatives with whom he is living. An additional condition of eligibility is that the persons must be destitute or immediately threatened with destitution."

This plan, by is own terms, sought reimbursement, at least in part, pursuant to Section 406(e).

On June 16, 1976, the plaintiffs were served with a June 15 notice of filing in the district court of the same liberalized Emergency Assistance Program, "which in part will employ § 406(e) emergency assistance funds," that the Legislative Advisory Committee had approved on June 14. Curiously, on June 17, 1976, counsel for the State informed the plaintiffs that he had been ordered not to file the new plan. The next day, the State filed a report of status which averred that the State would not "formulate or implement any Emergency Assistance Program which in part or in whole employs federal funds pursuant to Section 406(e) of the Social Security Act." Perhaps counsel for the State was inadvertently confirming the classic Shakespearean lesson on semantics: "What's in a name? That which we call a rose by any other name would smell as sweet." (*Romeo and Juliet,* Act I, Scene v.) At any rate, that June 15 plan was never filed in court.

The plan submitted to HEW on April 23, 1976 (Joint Appendix 21-132—21-140) was virtually the same plan as that declared illegal in *Mandley I.* Even in its brief here, Illinois lists only two minor changes in the plan submitted to HEW, neither of which has any relevancy to broadened eligibility requirements.[3] The liberal plan worked out between the April 26 and June 14 Legislative Advisory Committee hearings which HEW felt "radically different" from the pre-*Mandley I* plan has never been submitted to HEW as far as can be determined from the opaque record before us.

Rather the plan submitted to the regional office of HEW on April 23, 1976, was a program with eligibility requirements which were identical in all material particulars to the pre-*Mandley I* program. Thus on July 12, 1976, when the district judge declared the case moot the only change with respect to the Illinois Emergency Assistance Program funded by HEW was that the source of funding had been switched from Section 403(a)(5) to Section 403(a)(1). Most importantly for our purposes, the scope of the program's eligibility requirements was identical to that of the eligibility requirements declared illegal in the pre-*Mandley I* plan.

The end result is succinctly detailed in a June 1, 1976, colloquy between the district judge and plaintiffs' counsel:

> "The Court: But I don't think, as I get it, nobody is being deprived emergency assistance, although they may not get it under Section 606(a) [sic, 606(e)]
>
> "Mr. Lefkow: That is not correct, your Honor. Many, many people are being deprived of emergency assistance." (Tr. at 8)

DISMISSAL OF ACTION

On December 9, 1975, the defendant Secretary of Health, Education and Welfare filed a motion to dismiss on the ground of mootness. The state and federal motions to dismiss were answered by plaintiffs and denied by Judge McMillen on December 31, 1975, and he ordered the defendants to file objections to the plaintiffs' proposed final judgment and decree within three weeks. Such objections were filed by the state defendants on January 21, 1976, and by HEW on the following day but never ruled upon.[4] Instead, after plaintiffs declined to amend their complaint further, the district judge dismissed the cause for mootness and for lack of case or controversy on July 12, 1976. This appeal followed. We reverse.

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[3] See not 6 *infra.*

STRUCTURE OF SUBCHAPTER IV OF THE SOCIAL SECURITY ACT AS IT RELATES TO FUNDING OF AID PROGRAMS

In order to appreciate the funding of "emergency assistance" programs, it is necessary to outline briefly the structure of Subchapter IV funding. Section 401 authorizes the Congress to appropriate for each fiscal year a sum sufficient to carry out the general purposes of Part A of Subchapter IV—Aid to Families with Dependent Children. The sums so appropriated are made available to states which have submitted AFDC plans. Only states whose plans have been approved by the Secretary of Health, Education and Welfare may receive federal funds. The criteria for approval and the mechanics of approval are set forth in Section 402.

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[4] In order to force a district court decision so that they would then have a final order for purposes of appeal to this Court, plaintiffs asked us in March 1976 to mandamus the district court to decide whether or not to enter the plaintiffs' final judgment. We denied plaintiffs' petition for mandamus on March 31, 1976.

Once a state AFDC plan has been approved, Section 403(a) directs the Secretary of the Treasury to pay funds to the state from the funds appropriated under the authority of Section 401. Subsections (1)-(5) of Section 403(a) describe the various formulae used to calculate the actual dollar amounts to be paid. Since Section 403(a) actually directs the payment of funds, it is the section of Part A which should be referred to as the "funding" provision of Part A. Section 403(a)(5) provides that the Secretary of the Treasury shall pay 50 per cent of a state's expenditures for "emergency assistance" to needy families with children. It is the only part of Section 403(a) dealing with "emergency assistance."

THE DEFENDANTS' FRAMING OF THE MOOTNESS ISSUE

At the time of *Mandley I*, the state defendants were receiving emergency assistance funds under Section 403(a)(5). These funds were expended under the State's plan as "emergency assistance to needy families with children" as defined by Section 406(e)(1).

We are now advised that Illinois has ceased receiving funds pursuant to Section 403(a)(5) with the attached "strings" of Section 406(e)(1). Instead the State is receiving federal funds for emergency assistance under its regular AFDC plan pursuant to Section 403(a)(1). Since Section 403(a)(1) does not on its face include the term "emergency assistance to needy families with children," the State argues that the funds expended under Section 403(a)(1) no longer come with the attached "strings" of Section 406(e)(1). Defendants argue that the mandatory application of Section 406(e)(1) eligibility standards to the states announced in *Mandley I* occurs only if federal funding is received pursuant to Section 403(a)(5). Their argument concludes that since funding is now received only under Section 403(a)(1), the case is moot. Plaintiffs counter by alleging a circumvention of *Mandley I* by this change in funding.

SCOPE OF THE PRESENT CONTROVERSY

As a threshold matter, we must consider whether the plaintiffs' pleadings are broad enough to permit us to decide whether the defendants' change of funding is an artifice to avoid the *Mandley I* mandate. The amended complaint is an action brought to secure rights established by Section 406(e)(1) of the Social Security Act. Those are the rights that plaintiffs still seek to vindicate. The developments that took place after *Mandley* I were covered by the federal and state defendants' motions to dismiss, the plaintiffs' answer thereto, and the supporting documents filed by the respective parties. The very issue now before us was thus submitted and before the district court without the need of further amendments to the complaint.

This case is not moot, for the state defendants are still operating an emergency assistance program with matching federal funds, although under the guise of a "special assistance" program.[5] There is a live case or controversy

because plaintiffs maintain that the state defendants must still comply with the standards of Section 406(e)(1) as long as federal funding is used for this program, while the state and federal defendants remain juxtaposed against plaintiffs.

WHETHER SECTION 406(e)(1) "STRINGS" ATTACH TO EMERGENCY ASSISTANCE REGARDLESS OF FUNDING.

The Effect of Section 1318. Before reaching the ultimate issue—whether Section 406(e)(1) "strings" attach to emergency assistance regardless of funding—we must verify whether the present funding actually occurs under Section 403(a)(1). This is because HEW has recently informed us that the federal funding is solely under 42 U.S.C. § 1318. Section 1318 provides in pertinent part:

> "In the case of any State which has in effect a plan approved under subchapter XIX of this chapter for any calendar quarter, the total of the payments to which such State is entitled for such quarter, and for each succeeding quarter in the same fiscal year (which for purposes of this section means the 4 calendar quarters ending with June 30), under paragraphs (1) and (2) of section * * * 603(a), * * * of this title shall, at the option of the State, be determined by application of the Federal medical assistance percentage (as defined in section 1396d of this title), instead of the percentages provided under * * * such section, to the expenditures under its State plans approved under * * * part A of subchapter IV of this chapter, which would be included in determining the amounts of the Federal payments to which such State is entitled under such section, but without regard to any maximum on the dollar amounts per recipient which may be counted under such section."

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[5] Since we answer the issue of mootness at this fundamental level, we need not pass on the plaintiffs' answer to the defendants' motions to dismiss on grounds of mootness wherein they allege that "defendants intend by a technical maneuver to suspend temporarily requesting funds under § 406(e), to persuade this [district] court to dismiss the case as moot based on that suspension, and once the case is dismissed to return to § 406(e) funding without any prohibitions, injunctive or otherwise, from this [district] court." (Plaintiff's Memorandum in Opposition to Motions to Dismiss, December 17, 1975, at 5).

This provision as it relates to Section 603(a) (Section 403(a) of the Social Security Act) was added in 1968 by the Social Security Amendments of 1967. 1 U.S. Code Cong. & Admin. News 1042 (1967). The 1965 provision it amended was itself put in the Social Security Act merely to:

> "permit any state which has in effect a plan approved under the new title XIX [Medicaid] to claim Federal participation in its expenditures under all of its Federal-State public assistance programs by application of the new formula contained in title XIX instead of using the varying formulas in the existing titles." 1 U.S. Code Cong. & Admin. News 2265 (1965).

Indeed Section 1318, by its own terms, acknowledges that the entitlement for funding payments is still provided under Section 603(a) (Section 403(a) of the Social Security Act). Thus the interaction between Section 603(a) and 1318 preserves the former's status as the funding provision with the effect of the latter here to maintain the same 50 per cent federal and 50 per cent state ratio of funding that exists for emergency assistance to needy children under Section 403(a)(5) of the Act. At any rate, even if the funding were now solely under Section 1318, HEW states that "does not materially change the argument of the appellee [HEW]" (Nov. 1, 1976, HEW motion to correct its brief). The state defendants have not mentioned Section 1318 orally or on brief, evidently also realizing it does not change their position. As with emergency assistance funding under Section 403(a)(5), Illinois receives a 50 per cent federal share for its AFDC program under Section 1318 alone or in combination with Section 403(a)(1).

The Ultimate Issue. The state defendants admit that they are conducting the same program under the label

"special assistance" that they formerly conducted under the label of emergency assistance, with minor exceptions.[6] Illinois contends that the service it formerly gave under Section 406(e)(1) as emergency assistance to needy families with children is now given under Section 402 as part of aid to needy families with children. Instead of seeking federal funding for the program under Section 403(a)(5) authorizing the Secretary of the Treasury to pay 50 per cent of the total amount expended by a state under its plan for emergency assistance to needy families with children, the state defendants assert that they now obtain federal funding under Section 403(a)(1) providing that the Secretary of the Treasury pay each state which has an approved AFDC plan certain amounts as computed thereunder. We hold that the Illinois defendants cannot avoid the eligibility requirements of Section 406(e)(1) by relabeling the plan as part of AFDC under Section 402 while still receiving 50 per cent federal funding for what is really Section 406(e)(1) emergency assistance to children.

Stripped to the bone, our holding is founded on the premise that Section 403(a)(5) is the exclusive provision for federal funding of emergency needs under Part A of Subchapter IV. Section 406(e)(1), edited for present purposes, provides:

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[6] At HEW's suggestion, effective October 12, 1976, the state defendants removed the restriction limiting special assistance payments to once in any 12 consecutive months. Simultaneously, they no longer authorized the payment of moving costs as a result of court-ordered eviction. AFDC Manual, Release No. 76.46 (October 12, 1976), amending Manual Chapter 600.

"The term 'emergency assistance to needy families with children' means any of the following [furnished during a defined time period to people meeting defined eligibility standards]—

"(A) money payments, payments in kind, or such other payment as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and

"(B) such services as may be specified by the Secretary;

but only with respect to a State whose State plan approved under Section 602 [Section 402 of Social Security Act]of this title includes provision for such [emergency] assistance." (Emphasis supplied.)

Clearly the State has the option of whether or not to include a provision in its state plan in order to receive federal funding under Section 403(a)(5) for Section 406(e)(1) emergency assistance. The legislative history of Section 406(e) reinforces this reading of the statute. As the Senate Finance Committee's report stated:

> "a new program optional with the States would authorize dollar-for-dollar Federal matching to provide temporary assistance to meet the great variety of situations faced by needy children in families with emergencies." 2 U.S. Code Cong. & Admin. News 2838 (1967).

But the fact that a State has the option of whether or not to claim federal funding under Section 403(a)(5) for Section 406(e)(1) emergency assistance is totally distinct from the question of whether a state has the option to choose whether to receive federal funding for emergency needs under Section 403(a)(5) or 403(a)(1). We conclude the state does not enjoy such an option.

HEW's principal argument is that Section 403(a)(5) merely provides an additional source of monies for state emergency assistance plans. The total amount of funds appropriated in a given year for AFDC by the Congress is allocated according to the applicable formula in Section 403(a)(1). In any given year, the Section 403(a)(1) formula would determine a fixed dollar amount. Thus to the extent that federal funding for a "special assistance" program is sought from the total amount of monies in a year allocated to fund Section 403(a)(1) AFDC programs, these other programs presumably would be reciprocally limited. Since Section 403(a)(5) draws on a different block of the funds appropriated for emergency assistance in any given year, a similar limiting tension would not exist on state emergency programs funded under Section 403(a)(5). In this sense, Section 403(a)(5) funding is "additional." But by underscoring these funding subtleties, HEW has shown why Section 403(a)(5) should be construed as the exclusive funding provision for emergency assistance. The 1967 amendments were introduced to correct the unsatisfactory delivery of state emergency assistance. Those amendments would be undermined if HEW's construction were permitted to create this limiting tension on Section 403(a)(1) AFDC funds while the Section 403(a)(5) block of funds appropriated by Congress for emergency assistance in a given fiscal year lies unused.

When Congress added the emergency aid for children provisions to the Social Security Act in 1967, Senator Curtis explained them on the floor of the Senate (113 Cong. Rec. 36319 (1967)):

> "Now, Mr. President, I should like to refer to another new provision in this measure. *For the first time, the Federal Government will match money for emergency assistance. This has not been in the law before.* For a

> period of 30 days, emergency assistance can be paid in cases where they cannot meet other qualifications. Many of the States have asked for this provision, and it is one that should be looked at by those who say they will reject this bill because it is not liberal. It would do many of the things for which States, welfare directors, and others have been asking for a long time." (Emphasis supplied.)

Speaking directly after the acceptance of the Conference Report by the Senate, Senator Mansfield indicated the 1967 amendments' scope as follows (113 Cong. Rec. 36925 (1967):

> "Families with emergency trouble will be able to receive emergency assistance in whatever form it is best for them at their time of need. Families which have been burned out, suffered personal tragedies and such will be able to get money, medical care, shelter provided, food sent in, or whatever else is needed to deal with the crisis. The committees are to be commended for adding this provision, thus recognizing that emergencies which strike families cannot be dealt with by business-as-usual methods.
>
> "Sometimes emergencies which strike families reveal deep-seated problems which establish that the children are in danger of exploitation or abuse. Under the legislation, States are required to have, in advance, plans to deal with these situations. This means working closely with the courts and being prepared, when necessary, to find places for children removed from the home by the courts. For these children, previous provisions have been inadequate. Under the new legislation, the financing will be sufficient to assure that the child may be placed in a safe place with the Federal Government paying its share of the cost."

The tenor of these remarks shows the importance of the program and that participating states would have to provide a plan approved by HEW. Emergency assistance was meant to supplement normal AFDC payments. As the Senate Finance Committee reported:

> "The Committee understands that the process of determining AFDC eligibility and authorizing payments frequently precludes the meeting of emergency needs when a crisis occurs. In the event of eviction, or when utilities are cut-off, or when an alcoholic parent leaves children without food, immediate action is necessary. It frequently is unavailable under State programs today." (2 U.S. Code Cong. & Admin. News 3002 (1967).

The federal regulations require that "emergency assistance will be given forthwith" (45 C.F.R. Section 233.120(a)(5), but Congress provided in Section 406(e)(1) that emergency assistance should be furnished only once in any 12-month period. It is thus apparent that regular AFDC public assistance was administratively and congressionally distinguished from emergency assistance, which is a one-time grant to "avoid destitution" (Section 406(e)(1)). As we held in *Mandley I*, relying in part on additional legislative history, Congress intended the eligibility provisions of Section 406(e)(1) to be mandatory on states giving emergency assistance. 523 F. 2d at 420-423. To like effect, see *Williams* v. *Wohlgemuth*, 540 F. 2d 163 (3d Cir. 1976); Note, Meeting Short-Term Needs of Poor Families: Emergency Assistance for Needy Families with Children, 60 Corn. L. Rev. 879, 886-891 (1975) (hereinafter cited as Cornell Note). In our view, the synergistic sum of all these factors results in the conclusion that Congress intended Section 403(a)(5) to be the exclusive source of federal funding in Part A of Subchapter IV of the Social Security Act for the Section 406(e) emergency assistance needs of the citizens of the states.

Illinois cannot evade the Section 406(e)(1) eligibility requirements by relabeling its emergency assistance program as AFDC "special assistance" while still obtaining matching funds from the federal government. See *Youakim* v.

Miller, 425 U.S. 231.[7] If that were permissible by a mere change in nomenclature, the requirements of Section 406(e)(1) would be totally eviscerated.[8] Therefore, if Illinois continues to accept federal funds for its "special assistance" program, the guidelines established by Congress in Section 406(e)(1) must be met (*Williams* v. *Wohlgemuth*, *supra*, at 170 n. 37; *Lynch* v. *Philbrook*, —— F. Supp. ——, —— (D. Vt. 1976), and HEW must continue to provide half the funding under Section 403(a)(5), as it formerly did with respect to Illinois.

We may take note that state funds available for expenditure on welfare programs are tightly limited. The Senate Finance Committee's report shows that through emergency assistance Congress meant "[t]o encourage public welfare agencies to move promptly and with maximum effectiveness in [emergency situations]." 2 U.S. Code Cong. & Admin. News 3003 (1967). Congressman Mills noted in the

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[7] In discussing *Youakim*, HEW has recognized that for a foster care plan to be funded under Section 403(a)(1) or 1318, it must meet the inclusion requirements in Section 408 (Br. 11). Similarly here, even if an emergency assistance plan (by whatever name) is funded under Section 403(a)(1) or 1318, it must meet the eligibility requirements of Section 406(e)(1). In the words of another metaphor of the same genus, whatever Illinois presently dubs its emergency assistance plan, "a rose is a rose is a rose."

[8] The *amici curiae*, various private charities, state in their brief that if this were

> "successful, [Illinois] would make permanent the transfer of the burden of providing for most emergencies to the private social welfare organizations in violation of the basic principles of both federal and state welfare policy."

debates that with emergency assistance, the House believed "that encouraging the States to move quickly in family crises, supplying the family promptly with appropriate services, would in many cases preclude the necessity for the family having to go on [AFDC] assistance on a more or less permanent basis." 113 Cong. Rec. 23054 (1967). Funding with Section 406(e)(1) eligibility requirements for emergency assistance requires the states to meet the needs of a broader class of individuals. Cornell Note, *supra*, at 883, 884. The total state share, assuming maintenance of the present level of benefits,[9] for funding emergency needs when the federal matching share comes under Section 403(a)(5) would normally be larger than if the federal funding comes under AFDC Section 403(a)(1) (whether singly or in conjunction with Section 1318), a provision ostensibly free of the Section 406(e)(1) eligibility requirements. Congress would be thwarted in its aim to encourage the provision of emergency relief to those children whom it intended as targets if a state had the choice of claiming emergency assistance funds under Section 403(a)(1) for AFDC without the "strings" of Section 406(e)(1).

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[9] Of course, the level of state benefits does not have to remain constant. As we said in *Mandley I:*

> "Because Illinois has accepted federal funds to operate an emergency assistance program, it is bound by the eligibility provisions of 42 U.S.C. § 606(e). This need not result in additional expense to the state but with existing appropriations should at least result in helping a broader number of persons, although more moderately than at present." 523 F. 2d at 423.

RELIEF

This case concerns emergency needs of people in dire straits. Yet over three years have passed since the filing of the complaint and over one year has gone by since the return of our mandate in *Mandley I.* Therefore, we now consider *sua sponte* the objections of the defendants to the merits of plaintiffs' proposed final judgment of November 26, 1975. Cf. *Hartford-Empire Co.* v. *United States,* 323 U.S. 386, 410-435.

The state defendants object principally on the grounds that Section "406(e) funding" is no longer utilized by Illinois. For the reasons stated above, we cannot sustain this line of objection.[10] Lest Illinois mistakenly understand

this opinion to strip it of control over the implementation of its emergency assistance program, we hereby reaffirm our observations in *Mandley I:*

> "Illinois, should it elect to continue to provide an emergency assistance program in the future, will still have substantial control of its program. It will be able to choose the level of benefits that it will provide and to set the standard of need. It may reasonably limit the amounts paid out in emergency assistance, *Dandridge* v. *Williams,* 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491, but it will not be able to declare ineligible those who come within the federal definition of eligibility in Section 606(e). This Court need not establish the exact meaning of the eligibility provisions of Section 606(e) because this case requires only that the validity of the specific Illinois program be determined. The problem of setting workable definitions for the somewhat amorphous eligibility criteria in Section 606(e) may be addressed by HEW rule-making. Such rule-making should aid the states in preparing programs that are in accord with the eligibility criteria set by Congress." 523 F. 2d at 422-423.

Part of the proposed final judgment orders HEW to file a proposed regulation with the district court to conform to our opinion. HEW contends that a federal district court has "no authority to order the performance of a discretionary act, such as the adoption of any particular regulation."

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[10] The state defendants also apparently maintain that *Purnell* v. *Edelman,* 511 F. 2d 1248 (7th Cir. 1974), is a form of *stare decisis* upon our decision here. In the words of defendants' objection:

> "That case presented a problem to the Trial Court on remand identical to the instant situation. In *Purnell,* the Illinois Department of Public Aid chose to cease its participation in the same 406(e) Emergency Assistance program of utility service 'turnons' and instead adopted a different mode of handling the problem which did not use § 406(e) funds. Plaintiffs, on remand to the Court below, sought a Rule to Show Cause why the Defendants should not be held in contempt of Court. Upon being satisfied that the state was no longer claiming funds under the 406(e) Emergency Assistance Program, *plaintiffs withdrew their motion for a rule.* In that case withdrawal from the 406(e) program was sufficient to moot the controversy." (Emphasis supplied.)

The answer to this objection is immediate. In *Purnell,* the plaintiffs withdrew their own motion on the propriety of the State's funding of emergency assistance with federal funds not subject to Section 406(e) eligibility standards, thereby voluntarily mooting the case. But in *Mandley II* the plaintiffs, far from voluntarily mooting their own case, are vigorously pursuing an attack on the validity of the state's emergency assistance program.

But the duty of the Secretary to promulgate regulations implementing the provisions of the Social Security Act is a mandatory one. 42 U.S.C. § 1302. Implicit in HEW's objection is the notion that ordering the promulgation of regulations is an untoward invasion of the province of the Secretary. This contention has been persuasively answered by the Second Circuit. In ***Kingsbrook Jewish Medical Center* v. *Richardson,*** 486 F. 2d 663 (2d Cir. 1973),[11] the court reversed

> "the order below and remand[ed] to the district court with instructions to grant Kingsbrook's motion for summary judgment, to the extent of directing the Secretary of Health, Education and Welfare to promulgate regulations consistent with the interpretation [42 U.S.C.] 1395x(v)(1) that we have announced." 486 F. 2d at 670.

In an explanatory footnote, the court observed that:

> "Where there are no material issues of fact in dispute, an appellate court reviewing the dismissal of a complaint can, upon reversal, also remand with directions to grant summary judgment on appellant's previously denied cross-motion. Under the circumstances present here 'we perceive no reason for not bringing this litigation to an end.' Stein v. Oshinsky, 348 F. 2d 999, 1002 (2d Cir. 1965); 6 J. Moore, Federal Practice ¶ 56.13 at 2251-52 (2d ed. 1972)."

Since the defendants did not object to the findings of fact in the plaintiffs' final judgment, we can perceive no reason not to bring the instant case "to an end."

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[11] Professor Davis has approvingly characterized this case as an instance of a court being "guided by [its] usual common sense." K. Davis, Administrative Law of the Seventies, § 23.09 at 545 (1976).

Paragraph B-1 of the proposed final judgment purports to order the Secretary to include some specific items in the regulation, *viz.* "definitions of such terms as 'necessary to avoid destitution' and 'lack of available resources' which are compatible with providing emergency assistance when a needy child is approaching destitution." While it would be salutary to include such definitions in the new regulation and while the Secretary might find it necessary as a matter of administrative practicality to include them, we will not order HEW specifically to include any items in its new regulation.[12] Of course, whatever regulations the Secretary issues must be consistent with today's opinion and ***Mandley I.***

We have considered the defendants' other objections to the proposed judgment and find them without merit. Because there has been no compliance with our previous mandate for more than a year, we direct the district court to enter plaintiffs' proposed judgment forthwith except with respect to the definitional aspect of Paragraph B-1. In addition, finding of fact 7 should be deleted as obsolete, and Paragraph A-1(c) must be modified in accord with note 12. A fresh mandate will issue and be returned to the district court this day.

Judgment reversed and remanded for further proceedings consistent herewith.

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[12] Because of this change, Paragraph A-1(c) of the final judgment is modified to commence "Until HEW files regulations under Paragraph B-1 below,".

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VENUS MANDLEY, et al.,

Plaintiffs,

v.

JAMES L. TRAINOR, etc., et al.,

Defendants.

No. 73 C 2453

FINAL JUDGMENT AND DECREE

This matter comes on for entry of a final judgment and decree pursuant to prior decisions of this court and pursuant to the mandate of the Court of Appeals reversing in part and affirming in part the orders of this court to and including this court's order of March 14, 1975. The court being fully advised finds and concludes as follows:

FINDINGS OF FACTS

1. Except as modified herein, the factual findings of this court's memorandum decisions of November 21, 1974, February 5, March 14, August 1, and October 24, 1975 are incorporated herein as part of this final judgment.

2. The class of plaintiffs is composed of all (1) Aid to Families with Dependent Children (AFDC) recipients, (2) applicants for AFDC and (3) other families with needy children, in Illinois who are eligible for emergency assistance within the eligibility standard of § 406(e) of the Social Security Act (the Act), 42 U.S.C. § 606(e), as set out in paragraph 9 (p. 5) below.

3. Plaintiff Frances Gallman and her family met the eligibility standard of § 406(e) at the time of their application in November, 1973, to defendant Illinois Department of Public Aid (IDPA) for emergency assistance.

4. Defendants IDPA and its directors Edelman and Trainor have denied and continue to deny emergency assistance to plaintiff Gallman and to members of the plaintiff class who meet the eligibility standard of § 406(e) but whose emergency need arises from circumstances other than those described in defendants' regulations, IDPA Categorical Assistance Manual Ch. 6500, since renumbered, as Ch. PO 610.5.

5. The state defendants have reported to this court the length of time taken to process requests for emergency assistance, these reports having been made pursuant to the court's order of March 14, 1975. There the court required defendants to speed up the processing of emergency assistance requests from the "not uncommon" 7-10 days found by the court in its order of November 21, 1973,

so that emergency assistance requests will normally be disposed of within 24 hours. These reports show and I find as follows:

a. For requests for emergency assistance granted during the two reporting periods, May 8-June 9, 1975 and August 1-27, 1975, the periods of time taken for processing requests up to the time a check was ready to be placed in the mail or for pick up was more than one day in 88.8% (103 of 116) of cases in Cook County and in 71.6% (68 of 95) of cases in downstate counties:

	Cook	%	Downstate	%
Same day or 1 day	13	11	27	28.4
2 - 3 days	22	18.6	26	27.4
4 - 6 days	40	33.9	21	22.1
7 - 10 days	16	13.6	13	13.7
11 - 15 days	17	14.4	7	7.4
16 - 25 days	7	5.9	1	1.1
26 or more days	1	.8	0	0
not ascertained	2	1.7	0	0
	118	99.9	95	100.1

b. For requests for emergency assistance granted during the two reporting periods (May 8-June 9 and Aug. 1-27, 1975) four methods of delivery of emergency assistance checks were used: mail, pick up by client at fiscal management office, disbursing order at local office and by "C.D." (unexplained), as follows:

	Cook	Downstate
Mail	60	74
Disbursing Order	16	0
Pick-up at Fisc. Mgmt.	42	9
C.D.	0	12
	118	95

c. The amount of time from the date a check was ready for delivery by mail until receipt by the client during the two reporting periods was as follows:

	Cook	Downstate
1 day	31	34
2 days	8	6
3 days	0	1
4 - 6 days	0	1
7 or more days	1	3
Not ascertained	20	29
	60	74

Therefore, of those known, checks were delivered one or two days after mailing in 97.5 percent of cases in Cook and 88.9 percent downstate.

d. The reports demonstrate and the court finds that great and excessive delays continue to exist in the processing of emergency assistance checks, so that only a small percentage of checks are processed within 24 hours and delivered to the client within one or two days thereafter.

6. Since the mandate of the Court of Appeals was returned to this court, the state defendants have reported that they plan imminently to withdraw from the emergency

assistance program authorized by section 406(e) of the Act and have further reported that they plan to provide the same limited emergency assistance available under their program which was challenged and found unlawful in this lawsuit. In so doing, defendants intend to claim federal funds for this emergency assistance program under §§ 402 and 403(a)(1) (regular AFDC funds) of the Act.

CONCLUSIONS OF LAW

8. As defined in paragraph 2 above, this is a proper class action under Rule 23 of the Federal Rules of Civil Procedure.

9. The state defendants have violated and continue to violate § 406(e) of the Act in denying emergency assistance to plaintiff Frances Gallman and members of the class who are eligible for emergency assistance as defined in § 406(e), to wit: families with a needy child (i) under the age of 21, (ii) who is living with any of the relatives specified in § 406(a)(1) of the Act in a place of residence maintained by such relative as a home, (iii) where such child is without available resources, (iv) where emergency assistance is necessary to avoid destitution of or to provide living arrangements in a home for such child, and (v) where such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment.

10. Because defendants' emergency assistance program Categorical Assistance Manual Ch. 6500 (PO 610.5), limits eligibility more narrowly than § 406(e) permits, its enforcement and operation are unlawful.

11. Congress, in §§ 406(e) and 403(a)(5) of the Act has determined the terms of eligibility and funding for an emergency assistance program. The state defendants' effort to avoid the eligibility standards of § 406(e) by claiming funding for emergency assistance from funds available for AFDC or for any other federally funded program is contrary to the clear intent of the Act and a violation of § 406(e)(1).

12. Defendant United States Department of Health, Education and Welfare has violated §§ 406(e) and 402(b) of the Act, 42 U.S.C. §§ 606(e) and 602(b), and its own regulations, 45 C.F.R. § 233.10(a)(1)(ii)(A), in approving and funding Illinois' emergency assistance plan which denies such assistance to members of the plaintiff class made eligible by § 406(e).

13. Defendant H.E.W., furthermore, may not approve or fund a state's emergency assistance program, whether designated as a "special need" or otherwise, except as authorized by § 406(e).

14. The state defendants have violated and continue to violate § 406(e) of the Act and regulations promulgated thereunder, 45 C.F R. § 233.120(a)(5), which require that emergency assistance be given forthwith, by causing, and failing to correct after this court's order of November 21, 1974, serious delays in providing emergency assistance to members of the plaintiff class.

It Is Therefore Ordered And Decreed, as follows:

A. Defendants the Illinois Department of Public Aid, Joel Edelman and James I. Trainor, their successors in office, agents, employees and assigns are enjoined, so long as Illinois receives federal funding under Title IV-A of the Social Security Act, from claiming reimbursement for emergency assistance (however designated) under any other section of the Act than §§ 406(e) and 403(a)(5) and are enjoined from using any other means of limiting eligibility for emergency assistance more narrowly than the provisions of § 406(e), and are further enjoined from denying emergency assistance to plaintiff Frances Gallman and to any member of the plaintiff class with a needy child

(i) who is under the age of 21,

(ii) who is living with any of the relatives specified in § 406(a)(1) of the Act in a place of residence maintained by such relative as a home,

(iii) where such child is without available resources,

(iv) where emergency assistance is necessary to avoid destitution of or to provide living arrangements in a home for such child, and

(v) such destitution did not arise because such child or relative refused without good cause to accept employment or training for employment.

In furtherance of this injunction these defendants are specifically directed to do the following:

1. Within 7 days from entry of this order, defendants shall file with the court and with defendant HEW amendments to its AFDC Categorical Assistance Manual (and to forms and other necessary instructions to staff) consistent with the terms of this order. These amendments shall

(a) Set forth the availability of emergency assistance to families with a needy child in the terms set out in (i)-(v) above.

(b) Specify that non-AFDC eligible children are eligible for emergency assistance if they meet the eligibility standards of (i)-(v) above.

(c) Until HEW files regulations under ¶ B-1 below, establishes a definition of the terms "lack of available resources" and "necessary to avoid destitution" which are compatible with providing emergency assistance when a needy child is approaching destitution.

(d) Establish amounts of assistance, forms of payment and types of services to be provided.

(e) Set forth examples of common forms of destitution to be avoided by provision of emergency assistance, including, but not limited to imminent eviction, imminent termination of utilities, and lack of food, basic clothing and household furnishings.

(f) Set forth examples of common causes of such destitution, including but not limited to fire and other disaster causing homelessness or damage to personal possessions, eviction, theft, abandonment by a parent, delays in awaiting normal processing of AFDC applications, failure to receive AFDC assistance due to administrative error and failure to receive other forms of income.

2. Defendants' submission pursuant to paragraph A.1 (p. 8) herein shall not define eligibility more narrowly than § 406(e) of the Act and shall be equitable as required by 45 C.F.R. § 233.10(a)(1)(ii).

3. Defendants shall review within 30 days from entry of this order the IDPA hearing decision, No. 73-4155, of March 18, 1974 denying emergency assistance to plaintiff Frances Gallman in the circumstances alleged in this complaint, and shall enter a new decision in compliance with the Court of Appeals' decision and this order. Such decision shall be promptly filed with this court and defendants shall report all further action including payment made with respect to her administrative appeal.

4. In order to assist the parties and this court with further proceedings for compliance the state defendants shall, within 30 days of the entry of this order, commence

to register all requests by needy families with children for emergency aid, categorizing such requests by a) type of need, b) cause of need, c) department response and d) reasons for denial if denial of the request occurs, and shall submit to this court monthly until further order of court the information obtained from such registry.

5. Plaintiffs shall have 7 days after submission of the materials required in paragraph A.1-4 herein in which to file comments or objections.

B. Defendant U.S. Department of Health, Education and Welfare is hereby enjoined from approving state plans for emergency assistance which limit eligibility more narrowly than § 406(e) of the Act or funding an emergency assistance program (however designated) under any provision of the Act other than §§ 406(e) and 403(a)(5). In furtherance of this injunction, H.E.W. is specifically ordered as follows:

1. Within 60 days from entry of this order, it shall file with the court proposed regulations governing emergency assistance, which proposed regulations shall be in accord with the opinion of the Court of Appeals, with this order and with 45 C.F.R. § 233.10(a) (1)(ii)(A).

(a) Plaintiffs shall have 15 days after submission of the proposed regulations in which to comment.

(b) Upon approval by this court and completion of procedures required by law for promulgation of regulations, defendant H.E.W. shall publish the regulations in the Federal Register and Code of Federal Regulations.

2. Within 90 days after submission of Illinois' plan for emergency assistance pursuant to Paragraph A (pp. 7-9) above, H.E.W. shall notify the court and the parties of its action in approving or disapproving the amended plan in accordance with standards set by the Act, this order and the decision of the Court of Appeals.

C. Defendants Illinois Department of Public Aid, Joel Edelman and James L. Trainor, their successors in office, employees, agents and assigns are enjoined from failing to ensure that emergency assistance grants are given forthwith to members of the plaintiff class, and are specifically directed in furtherance of this injunction to modify their procedures to provide as follows:

1. Caseworkers and necessary supervisory and other staff shall give preference to requests for emergency assistance over all other work assignments. Within 24 hours of a request staff shall verify need, determine eligibility and follow all necessary procedures to secure issuance of the emergency assistance payment, whether by disbursing order or check. This time period may not be extended except—

(a) for the time attributable to delay caused by an applicant's failure to provide essential information within his or her understanding and immediate control, or

(b) by waiver signed by the applicant for emergency aid.

Delay based upon an applicant's fault in (a) above shall be clearly described in the applicant's case record maintained by the department. In a case of waiver, the original waiver shall be maintained in the case record and the applicant shall be furnished a copy.

2. An individual requesting emergency assistance shall be advised orally and in writing during the initial interview that if eligible he or she may receive a disbursing order at the local office that day or within 24 hours of the request or, if the client prefers, a check may be mailed from Springfield or Chicago to an address provided by the client.

3. An applicant for emergency assistance not yet regularly receiving AFDC, as well as an applicant for emergency assistance currently receiving AFDC, shall have his or her emergency assistance request acted upon within the time limits of paragraph 1 above.

4. Defendant Trainor shall amend the Department's Categorical Assistance Manual to incorporate paragraphs B 1, 2 and 3 above.

(a) A copy of the amendment shall be submitted to the court not later than 15 days from entry of this order. Plaintiffs may within 10 days thereafter file comments in response thereto.

(b) Defendants shall distribute the bulletin or amendment to casework staff within 10 working days after receipt of the court's approval of it.

(c) The amendment issued in compliance with this order shall be filed with the court and shall not be modified or in any way changed without obtaining leave of court beforehand.

5. For each month beginning with the first month following entry of this order and continuing thereafter until further order of the court, defendants shall report their compliance with this order in a form substantially similar to defendants' reports of June (undated) and September 18, 1975, with additional information showing the cause for any delay greater than 24 hours from the time of request until a disbursing order or check is ready for delivery.

D. Defendant Trainor is further ordered to give notice to class members by the following methods:

1. In the next regular mailing for AFDC warrants, defendants shall enclose a notice setting out in easily understandable language the changes in emergency assistance effected by this order.

2. Within 60 days of entry of this order, defendant shall cause to be prominently displayed in all public areas of each public aid office in Illinois a poster describing in easily understandable language the material terms of this order.

3. The notice described in paragraph 1 and the poster described in paragraph 2 shall describe the type of need and possible circumstances under which emergency assistance is available and the conditions of eligibility for the program.

E. This order and compliance with this order shall not be interpreted as altering or in any manner affecting other obligations defendants have with respect to providing prompt assistance to AFDC applicants and recipients and/or providing emergency assistance to AFDC applicants and recipients pursuant to other judgments rendered prior to the date of this order or pursuant to state law.

F. This judgment shall be binding on defendants, their officers, agents, attorneys, servants, employees and their successors, and upon those persons in active concert or participation with them who receive actual notice of the judgment by personal service or otherwise.

G. This court shall retain continuing jurisdiction over this cause for purposes of enforcement.

H. Plaintiffs are awarded their costs in this matter.

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United States District Judge
Thomas R. McMillen,

Date: ....